

**Elhady Plaintiffs  
MSJ Exhibit 29**



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# Transcript of Hao-y Tran Froemling, Designated Representative

**Date:** October 4, 2018

**Case:** El Hady, et al. -v- Kable, et al.

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Transcript of Hao-y Tran Froemling, Designated Representative 1 (1 to 4)  
Conducted on October 4, 2018

1	<p>1 UNITED STATES DISTRICT COURT</p> <p>2 EASTERN DISTRICT OF VIRGINIA</p> <p>3 ALEXANDRIA DIVISION</p> <p>4 - - - - - x</p> <p>5 ANAS ELHADY, et al., :</p> <p>6 Plaintiffs, :</p> <p>7 v. : Case No.</p> <p>8 CHARLES H. KABLE, : 16-cv-00375</p> <p>9 Director of the :</p> <p>10 Terrorist Screening :</p> <p>11 Center; in his :</p> <p>12 official capacity, et :</p> <p>13 al.; :</p> <p>14 Defendants. :</p> <p>15 - - - - - x</p> <p>16 Deposition of Hao-y Tran Froemling</p> <p>17 Washington, DC</p> <p>18 Thursday, October 4, 2018</p> <p>19 10:40 a.m.</p> <p>20 Job No.: 209464</p> <p>21 Pages: 1 - 107</p> <p>22 Reported By: Katy M. Zamora, CRR, RMR</p>	3
2	<p>1 A P P E A R A N C E S</p> <p>2 ON BEHALF OF PLAINTIFFS:</p> <p>3 CAROLYN HOMER, ESQUIRE</p> <p>4 GADEIR ABBAS, ESQUIRE</p> <p>5 LENA F. MASRI, ESQUIRE (via telephone)</p> <p>6 COUNCIL ON AMERICAN-ISLAMIC RELATIONS</p> <p>7 453 New Jersey Avenue, Southeast</p> <p>8 Washington, DC 20003</p> <p>9 (202) 488-0833</p> <p>10</p> <p>11 ON BEHALF OF DEFENDANTS:</p> <p>12 ANTONIA KONKOLY, ESQUIRE</p> <p>13 CHRISTOPHER HEALY, ESQUIRE</p> <p>14 UNITED STATES DEPARTMENT OF JUSTICE</p> <p>15 1100 L Street, Northwest</p> <p>16 Washington, DC 20005</p> <p>17 (202) 514-2000</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	4
2	<p>1 Deposition of Hao-y Tran Froemling held at the</p> <p>2 offices of:</p> <p>3</p> <p>4</p> <p>5 U.S. Department of Justice</p> <p>6 Civil Division</p> <p>7 1100 L Street, Northwest</p> <p>8 Washington, DC 20005</p> <p>9 (202) 514-2000</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 Pursuant to notice, before Katy M. Zamora, CRR,</p> <p>15 RMR, Notary Public in and for the District of</p> <p>16 Columbia.</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	4
2	<p>1 A P P E A R A N C E S C O N T I N U E D</p> <p>2 ON BEHALF OF DEFENDANTS:</p> <p>3 CONSTANTINA GLOVER, ESQUIRE</p> <p>4 RACHEL MANN, ESQUIRE</p> <p>5 U.S. CUSTOMS AND BORDER PROTECTION</p> <p>6 U.S. DEPARTMENT OF HOMELAND SECURITY</p> <p>7 1300 Pennsylvania Avenue, Northwest</p> <p>8 Suite 4.4B</p> <p>9 Washington, DC 20229</p> <p>10 (202) 344-3694</p> <p>11</p> <p>12 JENNIFER GREENBAND, ESQUIRE</p> <p>13 KEVIN HOULIHAN, ESQUIRE</p> <p>14 KATHLEEN GANNON, ESQUIRE</p> <p>15 U.S. DEPARTMENT OF HOMELAND SECURITY</p> <p>16 TRANSPORTATION SECURITY ADMINISTRATION</p> <p>17 601 South 12th Street</p> <p>18 12th Floor, East Tower</p> <p>19 Arlington, Virginia 20598</p> <p>20 (571) 227-4294</p> <p>21 ALSO PRESENT:</p> <p>22 JOSEPH VELAZQUEZ, Videographer</p>	4

Transcript of Hao-y Tran Froemling, Designated Representative 2 (5 to 8)  
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5	7
<p>1 C O N T E N T S</p> <p>2 EXAMINATION OF HAO-Y TRAN FROEMLING PAGE</p> <p>3 By Ms. Homer 6</p> <p>4</p> <p>5</p> <p>6 E X H I B I T S</p> <p>7 (Attached to the transcript)</p> <p>8 FROEMLING DEPOSITION EXHIBITS PAGE</p> <p>9 Exhibit 1 Notice of 30(B)(6) Deposition 8</p> <p>10 Exhibit 2 Froemling Declaration 19</p> <p>11 Exhibit 3 Quiet Skies Program Description 58</p> <p>12 Exhibit 4 NPR Story 101</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p>	<p>1 THE VIDEOGRAPHER: Okay. Would -- the court</p> <p>2 reporter today is Katy Zamora representing Planet</p> <p>3 Depos. Would the reporter please swear in the</p> <p>4 witness?</p> <p>5 Whereupon,</p> <p>6 HAO-Y TRAN FROEMLING,</p> <p>7 being first duly sworn or affirmed to testify to the</p> <p>8 truth, the whole truth, and nothing but the truth,</p> <p>9 was examined and testified as follows:</p> <p>10 EXAMINATION BY COUNSEL FOR PLAINTIFFS</p> <p>11 BY MS. HOMER:</p> <p>12 Q Okay. Ms. Froemling, I deposed you as a</p> <p>13 representative of the TSA back in March, correct?</p> <p>14 A Correct.</p> <p>15 Q You remember that?</p> <p>16 A Yes.</p> <p>17 Q And so you remember generally how a</p> <p>18 deposition works?</p> <p>19 A Yes.</p> <p>20 Q Okay. You understand you're under oath?</p> <p>21 A Yes.</p> <p>22 Q Is there any medical or other reason</p>
6	8
<p>1 P R O C E E D I N G S</p> <p>2 THE VIDEOGRAPHER: Here begins disc number</p> <p>3 one in the videotaped deposition of Hao-y Tran</p> <p>4 Froemling in the matter of Elhady, et al.,</p> <p>5 v. Kable, et al., in the United States District</p> <p>6 Court for the Eastern District of Virginia, case</p> <p>7 number 16-cv-375.</p> <p>8 Today's date is October 4, 2018.</p> <p>9 The time on the video monitor is 10:40 a.m.</p> <p>10 The videographer today is Joseph Velazquez</p> <p>11 representing Planet Depos.</p> <p>12 This video deposition is taking place at</p> <p>13 1100 L Street, Northwest, Washington, D.C.</p> <p>14 Would counsel please voice identify</p> <p>15 themselves and state who they represent.</p> <p>16 MS. HOMER: This is Carolyn Homer with the</p> <p>17 Council on American-Islamic Relations representing</p> <p>18 plaintiffs; and joining me shortly will be Gadeir</p> <p>19 Abbas, also for plaintiffs; and on the phone is Lena</p> <p>20 Masri for plaintiffs.</p> <p>21 MS. KONKOLY: Antonia Konkoly for the U.S.</p> <p>22 Department of Justice for the defendants.</p>	<p>1 preventing you from providing truthful testimony</p> <p>2 today?</p> <p>3 A No.</p> <p>4 Q Can you turn in your binder to what's marked</p> <p>5 as tab one.</p> <p>6 (Froemling Deposition Exhibit 1 was</p> <p>7 marked for identification and attached to the</p> <p>8 transcript.)</p> <p>9 Q Do you recognize this deposition notice?</p> <p>10 A Yes.</p> <p>11 Q Have you seen it before today?</p> <p>12 A Yes.</p> <p>13 Q Are you prepared to testify on behalf of the</p> <p>14 TSA on the three topics listed on this notice?</p> <p>15 A Yes.</p> <p>16 Q Okay. As an initial matter, Ms. Froemling,</p> <p>17 the Federal Air Marshal Service is the subcomponent</p> <p>18 of the TSA, correct?</p> <p>19 A Correct.</p> <p>20 Q Okay. And the TSA has the authority to</p> <p>21 direct the actions of the Federal Air Marshal</p> <p>22 Service?</p>

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<p style="text-align: right;">9</p> <p>1 <b>A Correct.</b></p> <p>2 Q Okay. Ms. Froemling, does the TSA engage in</p> <p>3 intelligence collection on passengers in airports?</p> <p>4 <b>A No.</b></p> <p>5 MS. KONKOLY: Can I get an objection?</p> <p>6 MS. HOMER: Yes.</p> <p>7 MS. KONKOLY: Objection insofar as the</p> <p>8 complete answer would call for information protected</p> <p>9 by SSI. You can answer the best you can.</p> <p>10 <b>A No.</b></p> <p>11 Q What is Federal Air Marshal special mission</p> <p>12 coverage?</p> <p>13 <b>A So --</b></p> <p>14 MS. KONKOLY: I'm sorry. Objection insofar</p> <p>15 as the complete answer would call for information</p> <p>16 protected by SSI. You can answer insofar as you</p> <p>17 can.</p> <p>18 <b>A So the Federal Air Marshals are charged with</b></p> <p>19 <b>the mission of securing the aircraft for aviation</b></p> <p>20 <b>security and protection of passengers and crew. So</b></p> <p>21 <b>part of their -- their mission is to be on board</b></p> <p>22 <b>flights, and that includes special mission coverage</b></p>	<p style="text-align: right;">11</p> <p>1 Q What is suspicious activity?</p> <p>2 MS. KONKOLY: Objection insofar as that</p> <p>3 answer -- the complete answer would call for any</p> <p>4 information protected by SSI. You can answer to the</p> <p>5 extent that you can.</p> <p>6 <b>A So related to as -- our Federal Air Marshals</b></p> <p>7 <b>are law enforcement officers, and they are trained</b></p> <p>8 <b>to observe activities of passengers and securing the</b></p> <p>9 <b>cabin of the aircraft, as well as to secure the</b></p> <p>10 <b>aviation security.</b></p> <p>11 <b>They are looking for, as part of their law</b></p> <p>12 <b>enforcement activities, any activities that may</b></p> <p>13 <b>potentially cause harm or endanger the aircraft or</b></p> <p>14 <b>passengers and crew. So their suspicious activity</b></p> <p>15 <b>would be actions that seem out of the ordinary or</b></p> <p>16 <b>anomalous behavior, something that could potentially</b></p> <p>17 <b>endanger.</b></p> <p>18 Q If a Federal Air Marshal observes suspicious</p> <p>19 activity, do they document that in a report?</p> <p>20 MS. KONKOLY: Objection insofar as the</p> <p>21 answer calls for any information protected by SSI.</p> <p>22 You can answer to the extent that you can.</p>
<p style="text-align: right;">10</p> <p>1 <b>when they are assigned to flights to protect</b></p> <p>2 <b>aviation security.</b></p> <p>3 Q As part of special mission coverage, do</p> <p>4 Federal Air Marshals observe the behavior of</p> <p>5 specific passengers?</p> <p>6 MS. KONKOLY: Objection insofar as the</p> <p>7 complete answer would call for any information</p> <p>8 protected by SSI. You can answer insofar as you</p> <p>9 can.</p> <p>10 <b>A As also referencing in my declaration that</b></p> <p>11 <b>the Federal Air Marshals are charged with, as part</b></p> <p>12 <b>of their security and law enforcement purposes,</b></p> <p>13 <b>observing passengers.</b></p> <p>14 Q Okay. Do Federal Air Marshals prepare</p> <p>15 reports on the observations they engage in of</p> <p>16 passengers?</p> <p>17 MS. KONKOLY: Objection insofar as the</p> <p>18 answer calls for any information protected by SSI.</p> <p>19 Again, you can answer to the extent that you can.</p> <p>20 <b>A So to the extent if they are noting any</b></p> <p>21 <b>suspicious activity, they do prepare reports related</b></p> <p>22 <b>to their mission and deployments.</b></p>	<p style="text-align: right;">12</p> <p>1 <b>A They do make notes if there is suspicious</b></p> <p>2 <b>activity.</b></p> <p>3 Q What are those reports called?</p> <p>4 MS. KONKOLY: Objection insofar as the</p> <p>5 answer would call for any information protected by</p> <p>6 SSI. You can answer to the extent that you can.</p> <p>7 <b>A I do not know the actual name of the report,</b></p> <p>8 <b>but it's primarily their FAMS mission reports.</b></p> <p>9 Q FAMS mission reports, okay.</p> <p>10 <b>A High level.</b></p> <p>11 Q Are FAMS mission reports ever provided to</p> <p>12 intelligence agencies?</p> <p>13 MS. KONKOLY: Objection insofar as the</p> <p>14 answer would call for any information protected by</p> <p>15 SSI. You can answer to the extent that you can.</p> <p>16 <b>A At a high level related to their law</b></p> <p>17 <b>enforcement duties as part of aviation security and</b></p> <p>18 <b>homeland security mission. If there is information</b></p> <p>19 <b>that rises to the level, depending on what it is</b></p> <p>20 <b>that's identified requires further referral or</b></p> <p>21 <b>investigation, they will provide it if it's -- for</b></p> <p>22 <b>example, if it's related to terrorist-related</b></p>

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<p style="text-align: right;">13</p> <p>1 activities, it may be referred to other agencies.</p> <p>2 Q Why do FAMS mission reports provided to</p> <p>3 other agencies, including intelligence agencies, not</p> <p>4 constitute intelligence collection on passengers at</p> <p>5 airports?</p> <p>6 MS. KONKOLY: Objection insofar as the</p> <p>7 answer calls for any information protected by SSI.</p> <p>8 You can answer to the extent that you can.</p> <p>9 A So the FAMS are performing -- their primary</p> <p>10 objective is to secure and provide aviation security</p> <p>11 and law enforcement -- provide the law enforcement</p> <p>12 presence to secure the aircraft, protect passengers</p> <p>13 and crew on flights.</p> <p>14 Their primary purpose is to thwart any</p> <p>15 potential harm that may come in that mission.</p> <p>16 Should any activities occur, be it -- whether it's</p> <p>17 law enforcement related or other -- if it rises to</p> <p>18 terrorist activity or something that occurs, that is</p> <p>19 the point at which it would be forwarded.</p> <p>20 It is not intelligence collection. Their</p> <p>21 purpose is not to observe and perform intelligence</p> <p>22 collection. As stated in my prior testimony, we do</p>	<p style="text-align: right;">15</p> <p>1 information and further review.</p> <p>2 Q So in some circumstances, particularly</p> <p>3 related to terrorism, FAMS do provide information to</p> <p>4 intelligence agencies?</p> <p>5 MS. KONKOLY: Objection insofar as the</p> <p>6 answer calls for any information protected by SSI.</p> <p>7 Objection, mischaracterizes prior testimony. You</p> <p>8 can answer to the extent that you can.</p> <p>9 A Correct. Information that is observed in</p> <p>10 the course of performing their law enforcement and</p> <p>11 aviation security mission, they will, if necessary,</p> <p>12 be referred to the appropriate agency. Same thing</p> <p>13 if criminal activity is observed, it is forwarded to</p> <p>14 the appropriate law enforcement agencies. If there</p> <p>15 is information that may rise and be related to</p> <p>16 terrorist-related activities, it may be referred to</p> <p>17 intelligence agencies, to answer your question.</p> <p>18 Q What are the intelligence agencies that the</p> <p>19 Federal Air Marshal Service may supply information</p> <p>20 to?</p> <p>21 MS. KONKOLY: Objection insofar as the</p> <p>22 answer calls for any information protected by SSI.</p>
<p style="text-align: right;">14</p> <p>1 not perform intelligence collection. The FAMS are</p> <p>2 performing their law enforcement duties to observe</p> <p>3 passengers and aircraft and monitor for potential</p> <p>4 activities that may cause harm. That is not</p> <p>5 intelligence collection. That is performing law</p> <p>6 enforcement and aviation security mission.</p> <p>7 Q In the course of FAMS performing their law</p> <p>8 enforcement mission, would it be fair to</p> <p>9 characterize some of the information they obtained</p> <p>10 during that mission as intelligence?</p> <p>11 MS. KONKOLY: Objection insofar as the</p> <p>12 answer would call for any information protected by</p> <p>13 SSI. You can answer to the extent that you can.</p> <p>14 A In the broader scheme, as part of their law</p> <p>15 enforcement mission, they are securing the aircraft.</p> <p>16 If there's additional information that is later</p> <p>17 determined to warrant further investigation or rises</p> <p>18 to the level of providing additional information</p> <p>19 related to terrorist activity or other capabilities</p> <p>20 or operational activities that relate to adversarial</p> <p>21 actions, that could be -- become then</p> <p>22 intelligence -- provided for intelligence</p>	<p style="text-align: right;">16</p> <p>1 You can answer to the extent that you can.</p> <p>2 A So broadly, it would depend on the</p> <p>3 information. When it rises to terrorist-related</p> <p>4 activities, we do share that information with the</p> <p>5 FBI and the National Counterterrorism Center, but it</p> <p>6 would very much depend on the information on a</p> <p>7 particular activity.</p> <p>8 Q Does the TSA maintain any list separate from</p> <p>9 the terrorist screening database, which are designed</p> <p>10 to identify high-risk passengers?</p> <p>11 MS. KONKOLY: Objection insofar as the</p> <p>12 complete answer would call for any information</p> <p>13 protected by SSI, and objection also as to the scope</p> <p>14 of the deposition, but you can answer to the extent</p> <p>15 that you can.</p> <p>16 A So related to my prior testimony, we had</p> <p>17 discussed rules-based passengers where they are not</p> <p>18 specific lists direct. However, we do have</p> <p>19 high-risk passengers where they may be derived based</p> <p>20 on rules that then are utilized to identify</p> <p>21 high-risk passengers.</p> <p>22 And to your question of any other lists</p>

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<p style="text-align: right;">17</p> <p>1 outside of the TSDB, keeping within the scope, in my</p> <p>2 prior testimony we had also discussed that there are</p> <p>3 other watch lists, to include the CDC and "Do Not</p> <p>4 Board" lists, that would be deemed higher risk.</p> <p>5 Q What is Quiet Skies?</p> <p>6 MS. KONKOLY: Objection insofar as the</p> <p>7 answer would call for any information protected by</p> <p>8 SSI. You can answer to the extent that you can.</p> <p>9 A So per my declaration, the Quiet Skies is</p> <p>10 one of TSA's high-risk, rules-based passenger</p> <p>11 programs related to TSA's risk-based,</p> <p>12 intelligence-driven rules to identify passengers</p> <p>13 that may present an elevated risk.</p> <p>14 Q And is every passenger currently subject to</p> <p>15 Quiet Skies rules compiled on a single list</p> <p>16 somewhere?</p> <p>17 MS. KONKOLY: Objection insofar as the</p> <p>18 answer calls for any information protected by SSI.</p> <p>19 You can answer to the extent that you can.</p> <p>20 A So as discussed previously, it is not a list</p> <p>21 direct similar to the watch list. What we have is</p> <p>22 we run a series of risk-based, intelligence-driven</p>	<p style="text-align: right;">19</p> <p>1 A So as discussed in my declaration, we have</p> <p>2 international-based and international-based subsets</p> <p>3 for domestic screening operations, which is Quiet</p> <p>4 Skies. We also have -- the name for the</p> <p>5 international-based rules is Silent Partner.</p> <p>6 Q I will just confess, I'm slightly confused.</p> <p>7 You used the word "international" for both of those.</p> <p>8 So what's the difference between Quiet Skies and</p> <p>9 Silent Partner?</p> <p>10 MS. KONKOLY: Objection insofar as that the</p> <p>11 answer calls for any information protected by SSI,</p> <p>12 but you can answer to the extent that you can.</p> <p>13 A So may I refer to my declaration?</p> <p>14 Q Yeah. Let's go ahead and just mark that.</p> <p>15 So the -- it's tab two we will mark as Exhibit 2.</p> <p>16 (Froemling Deposition Exhibit 2 was</p> <p>17 marked for identification and attached to the</p> <p>18 transcript.)</p> <p>19 A So on page 7 of 14, section 14, I discussed,</p> <p>20 we have rules that designate passengers on</p> <p>21 international flights for enhanced screening. As I</p> <p>22 just mentioned, that is our reference to Silent</p>
<p style="text-align: right;">18</p> <p>1 rules that then derive -- are matched up against a</p> <p>2 list of passengers. So, in effect, in order to</p> <p>3 execute it via our secure flight program, there is a</p> <p>4 list in order to be able to effect Quiet Skies and</p> <p>5 designate passengers for higher risk and enhanced</p> <p>6 screening.</p> <p>7 Q In addition to Quiet Skies, does the TSA</p> <p>8 have any other programs based off of the operation</p> <p>9 of high-risk rules?</p> <p>10 MS. KONKOLY: Objection insofar as the</p> <p>11 answer calls for any information protected by SSI.</p> <p>12 You can answer to the extent that you can.</p> <p>13 A Yes. So per my declaration, Quiet Skies is</p> <p>14 one of our rules-based programs. Yes, we do have --</p> <p>15 Quiet Skies is one of our rules-based programs to</p> <p>16 identify higher risk passengers.</p> <p>17 Q What are the names of the TSA's other</p> <p>18 rules-based programs to identify high-risk</p> <p>19 passengers?</p> <p>20 MS. KONKOLY: Objection insofar as an answer</p> <p>21 calls for any information protected by SSI, but you</p> <p>22 can answer to the extent that you can.</p>	<p style="text-align: right;">20</p> <p>1 Partner. Quiet Skies international rules that apply</p> <p>2 to domestic screening operations are Quiet Skies</p> <p>3 rules.</p> <p>4 Q If a flight is inbound from an international</p> <p>5 flight to the United States, is that governed by</p> <p>6 Quiet Skies or Silent Partner?</p> <p>7 MS. KONKOLY: Objection insofar as the</p> <p>8 answer could call for any information protected by</p> <p>9 SSI, but you can answer to the extent that you can.</p> <p>10 A As discussed, as that relates to</p> <p>11 international, that is Silent Partner.</p> <p>12 Q Okay. And if a flight is leaving the United</p> <p>13 States and flying to a foreign country, is that also</p> <p>14 Silent Partner?</p> <p>15 MS. KONKOLY: Objection insofar as the</p> <p>16 answer calls for any information protected by SSI.</p> <p>17 You can answer to the extent that you can.</p> <p>18 A So that applies to our domestic screening</p> <p>19 operations, so that is Quiet Skies.</p> <p>20 Q Okay. And if a flight is simply between two</p> <p>21 domestic airports, is that also Quiet Skies?</p> <p>22 MS. KONKOLY: Again, objection insofar as</p>

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<p style="text-align: right;">21</p> <p>1 the answer calls for anything protected by SSI, but</p> <p>2 you can answer to the extent that you can.</p> <p>3 <b>A Quiet Skies refers to our domestic screening</b></p> <p>4 <b>operations, yes.</b></p> <p>5 Q And for -- does TSA perform any rules-based</p> <p>6 screening on international airport to international</p> <p>7 airport flights?</p> <p>8 MS. KONKOLY: Objection insofar as the</p> <p>9 answer would call for any information protected by</p> <p>10 SSI. You can answer to the extent that you can.</p> <p>11 <b>A So just to clarify your question, does TSA</b></p> <p>12 <b>perform rule-based prescreening or physical</b></p> <p>13 <b>screening? I just want to clarify the question.</b></p> <p>14 <b>Sorry.</b></p> <p>15 Q Yeah. Does the TSA run any rules against</p> <p>16 the itineraries of individuals on</p> <p>17 international-to-international flights?</p> <p>18 MS. KONKOLY: And I'm going to object that</p> <p>19 that question calls for information protected by SSI</p> <p>20 and instruct the witness not to answer on that</p> <p>21 basis.</p> <p>22 Q Does the TSA cooperate with foreign</p>	<p style="text-align: right;">23</p> <p>1 question calls for any information protected by SSI,</p> <p>2 also as to the scope of the designated topics for</p> <p>3 this deposition, but you can answer if you can.</p> <p>4 <b>A So at a high level TSA does not perform the</b></p> <p>5 <b>screening abroad, so for international passengers</b></p> <p>6 <b>there is a cooperation where we have requirements on</b></p> <p>7 <b>carriers abroad to -- and airports' requirements to</b></p> <p>8 <b>perform screening prior to passengers boarding</b></p> <p>9 <b>aircraft.</b></p> <p>10 <b>So insofar as TSA -- and I also discussed in</b></p> <p>11 <b>my prior testimony -- provides the designation of</b></p> <p>12 <b>whether individuals should receive enhanced</b></p> <p>13 <b>screening, that information shared is not specific</b></p> <p>14 <b>to just the rules. TSA provides back to the</b></p> <p>15 <b>carriers which passengers are required to undergo</b></p> <p>16 <b>enhanced screening.</b></p> <p>17 Q So foreign governments conducting screening</p> <p>18 of international passengers are made aware that the</p> <p>19 TSA requires enhanced screening on those passengers?</p> <p>20 MS. KONKOLY: Objection insofar as the</p> <p>21 answer calls for any information protected by SSI,</p> <p>22 and, again, as to the scope of the designated topics</p>
<p style="text-align: right;">22</p> <p>1 governments in the operation of Silent Partner?</p> <p>2 MS. KONKOLY: Objection insofar as that</p> <p>3 question calls for any information protected by SSI,</p> <p>4 but you can answer to the extent that you can.</p> <p>5 <b>A So just to confirm the question, does the</b></p> <p>6 <b>TSA cooperate with other foreign governments? TSA</b></p> <p>7 <b>operates Silent Partner. Know that is primarily TSA</b></p> <p>8 <b>executing that. It is not with foreign governments.</b></p> <p>9 Q Does the TSA share the results of the</p> <p>10 operation of the high-risk Silent Partner rules with</p> <p>11 any foreign government agencies?</p> <p>12 MS. KONKOLY: And, again, objection insofar</p> <p>13 as the answer calls for any information protected by</p> <p>14 SSI. You can answer to the extent that you can.</p> <p>15 <b>A So TSA by its policy and procedures, we do</b></p> <p>16 <b>not, as a norm, share any of the results of the</b></p> <p>17 <b>rules direct to the rules. What we do is we operate</b></p> <p>18 <b>these rules-based programs to identify passengers</b></p> <p>19 <b>requiring enhanced screening. So we're -- go ahead.</b></p> <p>20 Q Does the TSA tell any foreign governments</p> <p>21 that they should subject international passengers to</p> <p>22 enhanced screening? Objection insofar as that</p>	<p style="text-align: right;">24</p> <p>1 for the deposition, but you can answer if you can.</p> <p>2 <b>A Right. So per my prior statement, to the</b></p> <p>3 <b>extent that they are made aware that there are</b></p> <p>4 <b>individuals that TSA has designated for enhanced</b></p> <p>5 <b>screening, they are aware and made aware via the</b></p> <p>6 <b>designation via TSA to the carrier of passengers</b></p> <p>7 <b>that have been designated to receive enhanced</b></p> <p>8 <b>screening.</b></p> <p>9 Q Where did the name Silent Partner come from?</p> <p>10 MS. KONKOLY: Objection insofar as that</p> <p>11 question calls for any information protected by SSI,</p> <p>12 but you can answer if you can.</p> <p>13 <b>A I'm not sure I can answer other than as TSA</b></p> <p>14 <b>worked to implement the execution. I was not there</b></p> <p>15 <b>when they were creating the name.</b></p> <p>16 Q Yeah. Who's the "partner" in Silent</p> <p>17 Partner?</p> <p>18 MS. KONKOLY: Objection, vague. Objection</p> <p>19 insofar as the answer could call for any information</p> <p>20 protected by SSI. You can answer if you can.</p> <p>21 <b>A It is not intended to be -- there is no</b></p> <p>22 <b>direct partner. The intent is that Silent Partner</b></p>



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<p style="text-align: right;">25</p> <p>1 are those individuals on international-related</p> <p>2 flights that have been identified via TSA's</p> <p>3 high-risk rules that require enhanced screening.</p> <p>4 There's no intended partner that I am aware of.</p> <p>5 Q Does partner --</p> <p>6 MS. KONKOLY: Can I just interject to say</p> <p>7 that the whispering from counsel is somewhat</p> <p>8 distracting, and we'd appreciate if you could pass</p> <p>9 notes instead.</p> <p>10 MR. ABBAS: There's going to be some</p> <p>11 whispering.</p> <p>12 MS. KONKOLY: Not during the witness'</p> <p>13 testimony, please.</p> <p>14 MR. ABBAS: Go ahead.</p> <p>15 Q Why is Silent Partner called silent?</p> <p>16 MS. KONKOLY: Objection. Asked -- I'm</p> <p>17 sorry. Objection, vague. Objection insofar as the</p> <p>18 answer calls for any information protected by SSI.</p> <p>19 You can answer if you can.</p> <p>20 A I do not have the information regarding how</p> <p>21 the name was decided. I can answer to the construct</p> <p>22 of they are high-risk rules. They're designated to</p>	<p style="text-align: right;">27</p> <p>1 A As I've previously stated, I do not have the</p> <p>2 background regarding the creation of the actual</p> <p>3 name. It is intended to and as part of my</p> <p>4 declaration for international flights and travelers</p> <p>5 we coordinate to identify rules that would identify</p> <p>6 potential travel patterns or terrorist-related --</p> <p>7 terrorist-related travel patterns or tradecraft and</p> <p>8 identify rules that may designate passengers that</p> <p>9 would have an elevated risk. So --</p> <p>10 Q You just said we coordinate. Who is the --</p> <p>11 A We, TSA.</p> <p>12 MS. KONKOLY: Objection insofar as the</p> <p>13 question calls for any information protected by SSI.</p> <p>14 Q Let me kind of make the question more</p> <p>15 precise for the record. You just said we</p> <p>16 coordinate. Who is the "we" that is coordinating on</p> <p>17 the rules?</p> <p>18 MS. KONKOLY: And let me put the objection</p> <p>19 in, insofar as it calls for any information</p> <p>20 protected by SSI, but you can answer if you can.</p> <p>21 A So TSA, the Office of Intelligence and</p> <p>22 Analysis, reviews current intelligence purporting to</p>
<p style="text-align: right;">26</p> <p>1 identify and implemented to mitigate threats to</p> <p>2 aviation security and to homeland security, identify</p> <p>3 passengers that may present a higher risk.</p> <p>4 Q In addition to Quiet Skies and Silent</p> <p>5 Partner, does the TSA have any other programs that</p> <p>6 are based on the operation of high-risk rules?</p> <p>7 MS. KONKOLY: Objection insofar as the</p> <p>8 question calls for any information protected by SSI.</p> <p>9 You can answer to the extent that you can.</p> <p>10 A So per my declaration, we know we have</p> <p>11 Silent Partner and Quiet Skies that are the</p> <p>12 operations of our high-risk rules for identifying</p> <p>13 high-risk passengers.</p> <p>14 Q So it's just those two?</p> <p>15 MS. KONKOLY: Same objections.</p> <p>16 A Yes.</p> <p>17 Q What is your understanding of who or what is</p> <p>18 the partner in Silent Partner?</p> <p>19 MS. KONKOLY: Objection, asked and answered.</p> <p>20 Objection, vague. Objection insofar as the question</p> <p>21 calls for any information protected by SSI, but you</p> <p>22 can answer if you can.</p>	<p style="text-align: right;">28</p> <p>1 identify threats to aviation security and to</p> <p>2 homeland security. We identify potential rules that</p> <p>3 would mitigate threats that have been identified,</p> <p>4 and I derived the rules. The coordination, as</p> <p>5 discussed in my declaration, is we do work with CBP</p> <p>6 to implement the rules.</p> <p>7 So when I say coordinate, we use their</p> <p>8 system, ATS, to implement our rules to identify</p> <p>9 high-risk passengers on international flights and</p> <p>10 then the subset is Quiet Skies for our domestic</p> <p>11 operations, which is implemented by TSA.</p> <p>12 Q In addition to CBP, does the TSA coordinate</p> <p>13 with any other federal foreign agencies --</p> <p>14 MS. KONKOLY: Objection --</p> <p>15 Q -- in the creation or implementation of</p> <p>16 high-risk rules?</p> <p>17 MS. KONKOLY: Objection insofar as the</p> <p>18 answer calls for information protected by SSI. You</p> <p>19 can answer -- and law enforcement privilege. You</p> <p>20 can answer to the extent that you can.</p> <p>21 A TSA derives the rules. TSA does an</p> <p>22 independent assessment of the intelligence and</p>

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<p style="text-align: right;">29</p> <p>1 creates the rules. We do not coordinate the</p> <p>2 creation of the rules with any -- with other federal</p> <p>3 agencies or foreign governments, to answer your</p> <p>4 question.</p> <p>5 Q What sources of intelligence is TSA deriving</p> <p>6 the rules from?</p> <p>7 MS. KONKOLY: Objection insofar as the</p> <p>8 answer calls for anything protected by SSI,</p> <p>9 potentially state secrets, and also the law</p> <p>10 enforcement privilege. You can answer to the --</p> <p>11 Q Let me ask that question a better way. What</p> <p>12 other agencies are communicating intelligence to the</p> <p>13 TSA that forms the basis of high-risk rules?</p> <p>14 MS. KONKOLY: And I'm going to object</p> <p>15 insofar as the answer calls for anything protected</p> <p>16 by SSI or the law enforcement privilege, and I'm</p> <p>17 going to instruct the witness not to answer.</p> <p>18 Q Is the FBI an agency that provides TSA with</p> <p>19 information that informs the creation of high-risk</p> <p>20 rules?</p> <p>21 MS. KONKOLY: I'm going to state the same</p> <p>22 objections, SSI, law enforcement privilege; and I'm</p>	<p style="text-align: right;">31</p> <p>1 not -- they are not the same as our process for</p> <p>2 watch list matching for passengers on the no-fly and</p> <p>3 selectee list.</p> <p>4 The high-risk rules are identification of</p> <p>5 passengers that have an elevated risk. They are</p> <p>6 derived from intelligence -- current intelligence</p> <p>7 reporting to mitigate threats to aviation security</p> <p>8 and homeland security.</p> <p>9 The rules themselves or matching to the rule</p> <p>10 are not -- those that match to the rule are not in</p> <p>11 and of themselves -- they are separate. They are</p> <p>12 not the -- we do not consider the high-risk rules</p> <p>13 matches those as the same as the TSDB watch list</p> <p>14 matching.</p> <p>15 Q Do the high-risk rules themselves cross</p> <p>16 reference any TSDB information?</p> <p>17 MS. KONKOLY: Objection, that answer calls</p> <p>18 for information protected by SSI, and I'm</p> <p>19 instructing the witness not to answer, and the law</p> <p>20 enforcement privilege.</p> <p>21 Q Does the operation of high-risk rules cross</p> <p>22 reference any phone numbers associated with TSDB</p>
<p style="text-align: right;">30</p> <p>1 going to again instruct the witness not to answer.</p> <p>2 Q Is the CIA an agency that provides</p> <p>3 information to the TSA that informs the creation of</p> <p>4 high-risk rules?</p> <p>5 MS. KONKOLY: Same objections, SSI, law</p> <p>6 enforcement privilege; and I'm again instructing the</p> <p>7 witness not to answer.</p> <p>8 Q Is the National Security Council an agency</p> <p>9 that provides intelligence information to the TSA</p> <p>10 that informs the creation of high-risk rules?</p> <p>11 MS. KONKOLY: Same objections, SSI, law</p> <p>12 enforcement privilege; and I'm instructing the</p> <p>13 witness not to answer.</p> <p>14 Q What is the relationship between the TSA's</p> <p>15 high-risk rules and the terrorist screening</p> <p>16 database?</p> <p>17 MS. KONKOLY: Objection insofar as the</p> <p>18 answer calls for any information protected by SSI or</p> <p>19 the law enforcement privilege. You can answer to</p> <p>20 the extent that you can.</p> <p>21 A So as discussed in my declaration, I view</p> <p>22 them as separate. The rules -- high-risk rules are</p>	<p style="text-align: right;">32</p> <p>1 listees?</p> <p>2 MS. KONKOLY: Objection, that question calls</p> <p>3 for information protected by SSI, potentially the</p> <p>4 state secrets privilege, the law enforcement</p> <p>5 privilege. And I'm instructing the witness not to</p> <p>6 answer.</p> <p>7 Q Does the operation of high-risk rules cross</p> <p>8 reference any family members that may be associated</p> <p>9 with TSDB listees?</p> <p>10 MS. KONKOLY: I'm going to again object on</p> <p>11 the basis of SSI, the law enforcement privilege, and</p> <p>12 I'm instructing the witness not to answer.</p> <p>13 Q Does the operation of high-risk rules cross</p> <p>14 reference any email addresses associated with TSDB</p> <p>15 listees?</p> <p>16 MS. KONKOLY: I am again objecting on the</p> <p>17 basis of SSI, the law enforcement privilege, and</p> <p>18 instructing the witness not to answer.</p> <p>19 Q Does the operation of high-risk rules ever</p> <p>20 lead to the collection of information on the</p> <p>21 passengers flagged by the rules that then leads to</p> <p>22 that passenger's nomination to the TSDB?</p>

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<p style="text-align: right;">33</p> <p>1 MS. KONKOLY: Objection, vague. Objection</p> <p>2 insofar as the answer calls for any information</p> <p>3 protected by SSI and the law enforcement privilege.</p> <p>4 You can answer to the extent that you can.</p> <p>5 <b>A So to date in our operation of high-risk</b></p> <p>6 <b>rules, we have not identified any reporting specific</b></p> <p>7 <b>to the rules that have been -- to make sure I'm</b></p> <p>8 <b>answering your question, can you confirm the last</b></p> <p>9 <b>part of your question just to make sure I'm</b></p> <p>10 <b>answering it?</b></p> <p>11 MS. HOMER: Can you read it back?</p> <p>12 (The Reporter read the record as</p> <p>13 follows: Does the operation of high-risk rules ever</p> <p>14 lead to the collection of information on the</p> <p>15 passengers flagged by the rules that then leads to</p> <p>16 that passenger's nomination to the TSDB?)</p> <p>17 MS. KONKOLY: And same objections.</p> <p>18 <b>A So as stated previously, we do not perform</b></p> <p>19 <b>intelligence collection, and as I described, we are</b></p> <p>20 <b>performing law enforcement observations to secure</b></p> <p>21 <b>the crew. The -- by virtue of being a match to a</b></p> <p>22 <b>rule does not lead automatically to a nomination to</b></p>	<p style="text-align: right;">35</p> <p>1 <b>passenger's nomination to the TSDB.</b></p> <p>2 Q TSA Administrator Pekoske testified to</p> <p>3 Congress on September 5 that Quiet Skies had led to</p> <p>4 nominations to the watch list; is that correct?</p> <p>5 MS. KONKOLY: I'm going to ask first that</p> <p>6 the witness be provided a copy of the testimony</p> <p>7 you're referencing.</p> <p>8 Q Are you familiar with that -- are you</p> <p>9 familiar that Administrator David Pekoske testified</p> <p>10 to Congress on September 5?</p> <p>11 <b>A Yes.</b></p> <p>12 Q Did you attend that hearing?</p> <p>13 <b>A No.</b></p> <p>14 Q Did you read the testimony from that</p> <p>15 hearing?</p> <p>16 <b>A I've read portions of the testimony.</b></p> <p>17 Q Did you review the video of that hearing?</p> <p>18 <b>A No.</b></p> <p>19 MS. HOMER: Can we take a quick break?</p> <p>20 MS. KONKOLY: Sure.</p> <p>21 THE VIDEOGRAPHER: Please stand by. We are</p> <p>22 going off the record. The time is 11:14 a.m.</p>
<p style="text-align: right;">34</p> <p>1 <b>the TSDB. To date those observations as performed</b></p> <p>2 <b>have not led to nominations to the TSDB.</b></p> <p>3 Q Has the TSA ever nominated a Quiet Skies</p> <p>4 selectee to the TSDB?</p> <p>5 MS. KONKOLY: Objection insofar as the</p> <p>6 answer calls for any information protected by SSI or</p> <p>7 potential law enforcement privilege. You can answer</p> <p>8 to the extent that you can.</p> <p>9 <b>A To date, TSA, by virtue of being a Quiet</b></p> <p>10 <b>Skies rules-based passenger, has not nominated a</b></p> <p>11 <b>Quiet Skies rules-based passenger to the TSDB.</b></p> <p>12 Q Has the TSA ever nominated a Quiet Skies</p> <p>13 selectee who was subjected to Federal Air Marshal</p> <p>14 scrutiny to the TSDB?</p> <p>15 MS. KONKOLY: Objection insofar as the</p> <p>16 answer calls for any information protected by SSI or</p> <p>17 the law enforcement privilege. You can answer to</p> <p>18 the extent that you can.</p> <p>19 <b>A I believe I just answered that, in that</b></p> <p>20 <b>Quiet Skies passengers' observations from our</b></p> <p>21 <b>Federal Air Marshals for being a Quiet Skies</b></p> <p>22 <b>rules-based passenger have not led to the</b></p>	<p style="text-align: right;">36</p> <p>1 (Off the record.)</p> <p>2 THE VIDEOGRAPHER: We are back on the</p> <p>3 record. The time is 10:32 a.m. (sic).</p> <p>4 MS. KONKOLY: And just a brief clarification</p> <p>5 before we move onto the next question. There was a</p> <p>6 line of questioning in which I objected and</p> <p>7 instructed the witness not to answer. We understood</p> <p>8 that line of questioning to be getting to the</p> <p>9 content of the Quiet -- or the rules-based</p> <p>10 targeting, and I just wanted to clarify that that is</p> <p>11 the understanding that we had of those questions on</p> <p>12 which we based those objections.</p> <p>13 BY MS. HOMER:</p> <p>14 Q Okay. One cleanup question from that, does</p> <p>15 the TSA's rules-based programs rely on terrorist</p> <p>16 screening database information in any capacity?</p> <p>17 MS. KONKOLY: Objection insofar as the</p> <p>18 answer would call for information protected by SSI</p> <p>19 and the law enforcement privilege. And again, I</p> <p>20 need to instruct the witness not to answer.</p> <p>21 Q Okay. So before the break I referenced</p> <p>22 testimony by Chairman Pekoske that he gave to</p>

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<p style="text-align: right;">37</p> <p>1 Congress, specifically the Senate, I believe,</p> <p>2 Transportation Oversight Committee on September 5,</p> <p>3 2018. Senator Markey in a portion of that</p> <p>4 deposition was asking Administrator Pecoske about</p> <p>5 the Quiet Skies program.</p> <p>6 That testimony, it's about an hour and a</p> <p>7 half long, and it is recorded by C-SPAN at</p> <p>8 C-span.org/video/?451104-1/</p> <p>9 TransportationSecurityAdministrationOversight.</p> <p>10 MS. KONKOLY: Counsel, I'll just note what I</p> <p>11 stated off the record which is that that's the URL</p> <p>12 that is live today, but we would ask you to create a</p> <p>13 permalink for that to preserve the testimony for the</p> <p>14 record.</p> <p>15 MS. HOMER: We are happy to do so. Starting</p> <p>16 at the 1-hour, 8-minute, and 38-second portion,</p> <p>17 there is a question from Senator Markey that Pecoske</p> <p>18 answers that I am now going to play.</p> <p>19 MR. ABBAS: Ask to confirm that that's</p> <p>20 Pecoske.</p> <p>21 MS. HOMER: Oh, yes.</p> <p>22 MS. KONKOLY: I'm going to ask that one</p>	<p style="text-align: right;">39</p> <p>1 SENATOR MARKEY: -- prosecuted yet? And how</p> <p>2 many threat --"</p> <p>3 Q Did you hear that testimony?</p> <p>4 <b>A I did.</b></p> <p>5 Q What is your understanding of what</p> <p>6 chairman -- or Administrator Pecoske meant when he</p> <p>7 said that individuals who are a part of the Quiet</p> <p>8 Skies program had later been determined to be part</p> <p>9 of a broader selectee pool?</p> <p>10 MS. KONKOLY: Objection, calls for</p> <p>11 speculation. Objection insofar as the answer would</p> <p>12 call for any information protected by SSI or the law</p> <p>13 enforcement privilege, but you can answer to the</p> <p>14 extent that you can.</p> <p>15 <b>A Okay. So my understanding, and in line with</b></p> <p>16 <b>my previous statement, TSA has not nominated any</b></p> <p>17 <b>individuals related to Quiet Skies for being Quiet</b></p> <p>18 <b>Skies passengers to the TSDB.</b></p> <p>19 <b>My understanding of his testimony is TSA --</b></p> <p>20 <b>it has been identified that past -- Quiet --</b></p> <p>21 <b>individuals that have matched to Quiet Skies rules</b></p> <p>22 <b>have subsequently been added to the TSDB as known or</b></p>
<p style="text-align: right;">38</p> <p>1 counsel from plaintiff's side ask the questions.</p> <p>2 MR. ABBAS: I did not ask a question of the</p> <p>3 deponent.</p> <p>4 Q All right. So first off, I want to show</p> <p>5 this video of the URL or the picture. Is this TSA</p> <p>6 Administrator Pecoske?</p> <p>7 <b>A Yes.</b></p> <p>8 Q Okay. Now we're going to play this</p> <p>9 question.</p> <p>10 "MR. PEKOSKE: I don't have that information</p> <p>11 off the top of my head.</p> <p>12 SENATOR MARKEY: How many individuals</p> <p>13 surveilled under the Quiet Skies program have been</p> <p>14 arrested or prosecuted?</p> <p>15 MR. PEKOSKE: I don't believe anybody has</p> <p>16 been arrested or prosecuted. However, people that</p> <p>17 are in the Quiet Skies program have eventually been</p> <p>18 determined to be part of a larger selectee pool</p> <p>19 based on what the Quiet Skies program --</p> <p>20 SENATOR MARKEY: I appreciate that, but no</p> <p>21 one has been arrested or --</p> <p>22 MR. PEKOSKE: No, sir.</p>	<p style="text-align: right;">40</p> <p>1 <b>suspected terrorists.</b></p> <p>2 Q Were those individuals who had matched to</p> <p>3 Quiet Skies rules and who were subsequently added to</p> <p>4 the TSDB as known or suspected terrorists on the</p> <p>5 Quiet Skies list at the time of their nomination to</p> <p>6 the TSDB?</p> <p>7 MS. KONKOLY: Objection insofar as the</p> <p>8 answer would call for any information protected by</p> <p>9 SSI or the law enforcement privilege. You can</p> <p>10 answer to the extent that you can.</p> <p>11 <b>A I do not know for fact. I do know at a high</b></p> <p>12 <b>level the way we perform our passenger prescreening</b></p> <p>13 <b>and secure flight is we do conduct match it --</b></p> <p>14 <b>passenger matching to identify if there are any</b></p> <p>15 <b>individuals on the no-fly or selectee, expanded</b></p> <p>16 <b>selectee list as discussed in my prior deposition.</b></p> <p>17 <b>So we conduct that match. If they match to</b></p> <p>18 <b>that, they would be identified as such. Separate to</b></p> <p>19 <b>that we also have our high-risk rules, TSA's</b></p> <p>20 <b>high-risk rules passengers.</b></p> <p>21 <b>Our system, the way I understand it is, if</b></p> <p>22 <b>you match to the TSDB to those lists, you would</b></p>

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<p style="text-align: right;">41</p> <p>1 be -- we would note it as such. If you're not on  2 those lists, we would also have our Quiet Skies  3 rules list matches.  4 And so, thus, if an individual has been  5 flagged for enhanced screening because of Quiet  6 Skies -- I do not know this for fact, but my  7 assumption is is they were not at the time on the  8 TSDB's no-fly selectee, expanded selectee. What we  9 have identified though, has been confirmed is that  10 individuals subsequent to being noted and matched to  11 Quiet Skies rules have been added to the TSDB.  12 Q Individuals are only flagged by Quiet Skies  13 for either 90 days or three encounters, correct?  14 MS. KONKOLY: Objection. That question  15 calls for information protected by SSI, and I'm  16 instructing the witness not to answer.  17 MS. GREENBAND: Oh, sorry.  18 MS. KONKOLY: That stands.  19 Q Has the TSA ever stopped flagging someone as  20 Quiet Skies selectees and then nominated that person  21 to the TSDB?  22 MS. KONKOLY: Objection, vague. Objection</p>	<p style="text-align: right;">43</p> <p>1 high-risk rule ever equivalent to derogatory  2 information that supports nomination to the TSDB?  3 MS. KONKOLY: Objection, vague. Objection  4 insofar as that question calls for any information  5 protected by SSI. And I need to instruct the  6 witness not to answer, and also on the basis of the  7 law enforcement privilege.  8 Q If an individual is flagged as a Quiet Skies  9 selectee on the basis of their travel patterns, can  10 the same travel pattern support information  11 nominating them to the TSDB?  12 MS. KONKOLY: Objection, that question calls  13 for information protected by SSI and the law  14 enforcement privilege, and I'm instructing the  15 witness not to answer.  16 Q Are the same facts that underlie application  17 of a Quiet Skies rule ever used to support a TSDB  18 nomination?  19 MS. KONKOLY: Same objections. That  20 question calls for information protected by SSI, the  21 law enforcement privilege, and I'm instructing the  22 witness not to answer.</p>
<p style="text-align: right;">42</p> <p>1 insofar as the question calls for any information  2 protected by SSI, but you can answer that if you  3 can.  4 A So to make sure I understand the question,  5 as I stated previously, we have not nominated  6 individuals to the TSDB as a result or as part of  7 being Quiet Skies rules.  8 Q Does being flagged as a Quiet Skies designee  9 in any way support a nomination to the TSDB?  10 MS. KONKOLY: Objection, vague. Objection,  11 calls for speculation. Objection insofar as the  12 answer calls for any information protected by SSI.  13 You can answer to the extent that you can.  14 A So as stated, my declaration simply matching  15 our rules are established to identify passengers  16 that present an elevated risk and are higher risk.  17 Simply matching to the rule does not identify them  18 as being a known or suspicious terrorist. We have  19 not nominated -- we do not automatically nominate  20 anybody that matches to our high-risk rules to the  21 watch list.  22 Q Is the same information that triggers a</p>	<p style="text-align: right;">44</p> <p>1 Q Is the fact that an individual has been  2 flagged as a Quiet Skies selectee ever used in the  3 totality of the circumstances to support a  4 nomination to the TSDB?  5 MS. KONKOLY: Objection insofar as the  6 question calls for any information protected by SSI  7 and the law enforcement privilege, but you can  8 answer that one to the extent that you can.  9 A I'm sorry. So repeat the question. Is the  10 fact that an individual is a match to the -- I'm  11 sorry.  12 MS. HOMER: Can you read it back for me,  13 please.  14 (Pending question read.)  15 MS. KONKOLY: And the same objections.  16 A So what I can state and I will reiterate is  17 to date TSA has not nominated any individuals  18 from -- that have been identified as a Quiet -- a  19 match to the Quiet Skies rules to the TSDB. By  20 virtue of being a match to the Quiet Skies rules  21 does not -- also does not automatically go to a  22 nomination to a TSDB.</p>

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<p style="text-align: right;">45</p> <p>1 Circumstances in the totality, as discussed</p> <p>2 in prior testimony, is there's multiple pieces of</p> <p>3 information and criteria that would need to be met</p> <p>4 to be nominated to the TSDB.</p> <p>5 So I'm trying to be responsive. I'm not</p> <p>6 sure if I could say -- the fact that they were a</p> <p>7 Quiet Skies match was used as part of a nomination</p> <p>8 to the TSDB. I can say for -- definitively TSA has</p> <p>9 not provided nor nominated anyone from the Quiet</p> <p>10 Skies to the TSDB. However -- I'll leave it at</p> <p>11 that.</p> <p>12 Q To the TSA's knowledge, has any other agency</p> <p>13 nominated an individual who happened to be a Quiet</p> <p>14 Skies selectee to the TSDB?</p> <p>15 MS. KONKOLY: I'm going to object that the</p> <p>16 witness is here to testify on behalf of the TSA</p> <p>17 only, so that is outside of the scope of the</p> <p>18 deposition for today. I'll also object based on</p> <p>19 insofar as the answer calls for any information</p> <p>20 protected by SSI, but you can answer that if you</p> <p>21 happen to know, to the extent that you can.</p> <p>22 Let me also interject to the law enforcement</p>	<p style="text-align: right;">47</p> <p>1 MS. KONKOLY: Objection insofar as that</p> <p>2 question calls for anything protected by SSI, but</p> <p>3 you can answer to the extent that you can.</p> <p>4 A Correct. These are based on rules that we</p> <p>5 have derived from current intelligence reporting and</p> <p>6 present -- to identify passengers that present an</p> <p>7 elevated risk. This is not related to, as you</p> <p>8 stated, criminal -- specific criminal reporting of</p> <p>9 individuals to then put them in as a list.</p> <p>10 Q Okay. Can we turn to paragraph nine of your</p> <p>11 declaration, which was previously marked as</p> <p>12 Exhibit 2. In paragraph nine, the third full</p> <p>13 sentence reads, "Risk-based security increases</p> <p>14 operational efficiency and security effectiveness by</p> <p>15 allowing TSA to focus less on lower-risk travelers</p> <p>16 and more on higher-risk passengers or those about</p> <p>17 whom it knows less."</p> <p>18 And then it continues, "Quiet Skies is one</p> <p>19 of TSA's risk-based security programs that</p> <p>20 identifies and addresses potential threats from</p> <p>21 individuals who may intend harm to aviation security</p> <p>22 but who are not in the TSDB."</p>
<p style="text-align: right;">46</p> <p>1 privilege as well. Again, you can answer to the</p> <p>2 extent that you can.</p> <p>3 A So as stated earlier and after -- and also</p> <p>4 for clarification questions of what the</p> <p>5 administrator stated, I can not speak for other</p> <p>6 agencies. However, it has been identified -- the</p> <p>7 individuals that have matched to Quiet Skies rules</p> <p>8 but independent of TSA matching those individuals to</p> <p>9 Quiet Skies rules have been added to the TSDB.</p> <p>10 Q Is Quiet Skies information ever used in</p> <p>11 support of TSDB nominations?</p> <p>12 MS. KONKOLY: Objection insofar as the</p> <p>13 question calls for any information protected by SSI</p> <p>14 and the law enforcement privilege, but you can</p> <p>15 answer that one to the extent that you can.</p> <p>16 A I believe I've answered that. TSA has not</p> <p>17 nominated individuals for -- based -- that have</p> <p>18 matched the Quiet Skies rules to the TSDB.</p> <p>19 Q The operation of either Quiet Skies or</p> <p>20 Silent Partner high-risk rules do not depend on an</p> <p>21 individual being under investigation for any crime,</p> <p>22 correct?</p>	<p style="text-align: right;">48</p> <p>1 Did I read that correctly?</p> <p>2 A You did read that correctly.</p> <p>3 Q What constitutes an individual who may</p> <p>4 intend harm to aviation security but who is not in</p> <p>5 the TSDB?</p> <p>6 MS. KONKOLY: Objection insofar as that</p> <p>7 question calls for any information protected by SSI</p> <p>8 or the law enforcement privilege, but you can answer</p> <p>9 that to the extent that you can.</p> <p>10 A So as you stated, from a risk-based security</p> <p>11 perspective, TSA is reviewing current intelligence</p> <p>12 reporting to identify threats to aviation security</p> <p>13 or homeland security. As I discussed earlier, TSA</p> <p>14 does perform matches against individuals in the TSDB</p> <p>15 for the no-fly selectee, expanded selectee lists.</p> <p>16 But we also -- there is a component of</p> <p>17 unknown -- so the TSDB are for those individuals</p> <p>18 that have met the reasonable suspicion standards to</p> <p>19 be a known or suspected terrorist. TSA also reviews</p> <p>20 current intelligence reporting to identify threats</p> <p>21 to aviation security and homeland security.</p> <p>22 There is enough information there to know</p>

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<p style="text-align: right;">49</p> <p>1 that there are threats and for that, but we do not</p> <p>2 know the actual individuals, right, and that's why</p> <p>3 this is separate from the TSDB related matching that</p> <p>4 we perform. We derive a series of rules to try to</p> <p>5 mitigate that threat and any potential harm that may</p> <p>6 come about because of that threat reporting.</p> <p>7 So this is to address -- those rules are to</p> <p>8 try to identify passengers who may present a higher</p> <p>9 risk for which TSA -- where we have established this</p> <p>10 to identify for enhanced screening to -- again, to</p> <p>11 try to mitigate the potential higher risk that</p> <p>12 passengers may present in mitigation of the aviation</p> <p>13 security and homeland security threats.</p> <p>14 Q Okay. In paragraph ten of your declaration,</p> <p>15 you use the phrase "unknown or partially known</p> <p>16 terrorists," correct?</p> <p>17 A Correct.</p> <p>18 Q Is an unknown or partially known terrorist</p> <p>19 the same thing as an individual who may intend harm</p> <p>20 to aviation security but who is not in the TSDB?</p> <p>21 MS. KONKOLY: Objection insofar as the</p> <p>22 answer calls for anything protected by SSI, but you</p>	<p style="text-align: right;">51</p> <p>1 say what may have occurred had the enhanced</p> <p>2 screening or the identification of higher risk</p> <p>3 passengers for enhanced screening, what may have</p> <p>4 occurred had they not been identified.</p> <p>5 However, as it comes to directly known of a</p> <p>6 direct plot that's been foiled by various -- any</p> <p>7 specific passenger designated via Quiet Skies, no, I</p> <p>8 do not -- have not identified any.</p> <p>9 Q Has the Silent Partner program ever foiled</p> <p>10 any terrorist threats?</p> <p>11 MS. KONKOLY: Same objections insofar as the</p> <p>12 answer calls for any information protected by SSI or</p> <p>13 the law enforcement privilege, but you can again</p> <p>14 answer to the extent that you can.</p> <p>15 A So I would answer the same as I answered for</p> <p>16 Quiet Skies. It's very difficult to identify those</p> <p>17 that were deterred and did not occur and we did not</p> <p>18 identify from a deterrence effect. I cannot -- it's</p> <p>19 difficult to speculate on that. However, we have</p> <p>20 not formally identified any foiled terrorist plots</p> <p>21 based on Quiet Skies -- I'm sorry, Silent Partner.</p> <p>22 Q Has either Quiet Skies or Silent Partner led</p>
<p style="text-align: right;">50</p> <p>1 can answer that if you can.</p> <p>2 A It's -- to an extent, yes. When we view the</p> <p>3 current intelligence reporting and we identify a</p> <p>4 threat we know that there is information out there</p> <p>5 that are indications that present this threat but</p> <p>6 it's not fully known, that's why they are not on the</p> <p>7 TSDB for us to direct identify individuals.</p> <p>8 We do have enough information based on the</p> <p>9 threat reporting to then identify rules to identify</p> <p>10 passengers that present a higher risk that may</p> <p>11 intend to harm. So it's the risk related, so that's</p> <p>12 the difference. It's unknown, partially known, so</p> <p>13 we're trying to mitigate the threat by identifying</p> <p>14 potentially higher risk.</p> <p>15 Q Has the Quiet Skies program ever foiled a</p> <p>16 terrorist plot?</p> <p>17 MS. KONKOLY: Objection insofar as that</p> <p>18 answer calls for information protected by SSI or the</p> <p>19 law enforcement privilege. You can answer that to</p> <p>20 the extent that you can.</p> <p>21 A So it's very difficult to talk to if</p> <p>22 something has been deterred. It's very difficult to</p>	<p style="text-align: right;">52</p> <p>1 to the arrest or prosecution of an individual on</p> <p>2 their list?</p> <p>3 MS. KONKOLY: Again, objection insofar as</p> <p>4 the answer calls for any information protected by</p> <p>5 SSI or the law enforcement privilege. You can</p> <p>6 answer to the extent that you can.</p> <p>7 A No, not specific to by virtue of being the</p> <p>8 match to Silent Partner or Quiet Skies.</p> <p>9 Q What is the TSA's definition of an unknown</p> <p>10 or partially known terrorist?</p> <p>11 MS. KONKOLY: Objection insofar as the</p> <p>12 complete answer calls for anything protected by SSI</p> <p>13 or the law enforcement privilege. You can answer to</p> <p>14 the extent you can.</p> <p>15 A So as I discussed earlier, there is current</p> <p>16 intelligence reporting out there that speaks to</p> <p>17 threats to aviation security and homeland security</p> <p>18 or threats at large. TSA is focusing on those that</p> <p>19 are related to aviation security and homeland</p> <p>20 security.</p> <p>21 Those particular threats may not be as</p> <p>22 granular down to being those that have been</p>

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<p style="text-align: right;">53</p> <p>1 identified and listed in the TSDB. However, there</p> <p>2 is information that relates to -- there are specific</p> <p>3 activities that present a threat to aviation and</p> <p>4 homeland security.</p> <p>5 So we do not know all the details of, say,</p> <p>6 the actual threat actors or there's only partially</p> <p>7 known information which is why -- to mitigate that</p> <p>8 threat, because they are not known or meeting</p> <p>9 suspicion of known suspected terrorists, which is</p> <p>10 part of the TSDB as discussed earlier. These are</p> <p>11 those that we know there's a threat but we do not</p> <p>12 have the details down to individuals to say and that</p> <p>13 is why they are unknown or only partially known.</p> <p>14 Q In paragraph ten -- I'm summarizing -- you</p> <p>15 state that following the Christmas Day underwear</p> <p>16 bomber TSA conducted a review of existing threats to</p> <p>17 aviation security. Is that generally correct?</p> <p>18 A That is correct.</p> <p>19 Q Where is that review memorialized?</p> <p>20 MS. KONKOLY: Objection insofar as the</p> <p>21 answer would call for information protected by SSI</p> <p>22 or the law enforcement privilege. You can answer to</p>	<p style="text-align: right;">55</p> <p>1 executed via secure flight. We also have</p> <p>2 documentation that memorializes what those rules are</p> <p>3 that are also reviewed on a quarterly -- regular</p> <p>4 basis with our DHS, oversight, civil rights and</p> <p>5 liberties, privacy, our chief counsel. They are</p> <p>6 approved and regularly reviewed by our</p> <p>7 administrator -- approved by our administrator or</p> <p>8 deputy administrator.</p> <p>9 Q And what are the documents that memorialize</p> <p>10 the high-risk rules called?</p> <p>11 MS. KONKOLY: Objection insofar as that</p> <p>12 answer calls for any information protected by SSI,</p> <p>13 but you can answer if you can.</p> <p>14 A I don't know the actual name of the</p> <p>15 document. It is memorialized in a memo, which is</p> <p>16 approved by our administrator for the --</p> <p>17 Q What are the quarterly reports conducted by</p> <p>18 the civil rights authorities called?</p> <p>19 MS. KONKOLY: And, again, objection insofar</p> <p>20 as the answer calls for any information protected by</p> <p>21 SSI, but you can answer to the extent that you can.</p> <p>22 A I don't know that the reports have a name.</p>
<p style="text-align: right;">54</p> <p>1 the extent that you can. I'm also going to</p> <p>2 interpose a scope objection.</p> <p>3 A I'd have to go back. Generally speaking,</p> <p>4 when we review current intelligence reports we --</p> <p>5 and identify those that are aviation threats,</p> <p>6 aviation security threats or homeland security</p> <p>7 threats, we have intelligence reports, whether we</p> <p>8 are providing it to our senior leadership or review</p> <p>9 by our security operations or leadership. I don't</p> <p>10 know if we can follow up on that.</p> <p>11 Q Okay. What are --</p> <p>12 A Sorry.</p> <p>13 Q What are the documents called where the TSA</p> <p>14 creates and explains its high-risk rules?</p> <p>15 MS. KONKOLY: Objection insofar as the</p> <p>16 answer calls for any information protected by SSI.</p> <p>17 You can answer if you know.</p> <p>18 A What are the documents called where TSA</p> <p>19 explains its --</p> <p>20 Q And creates the high-risk rules.</p> <p>21 A So we review reports. We implement our</p> <p>22 high-risk rules in the ATS system and then also</p>	<p style="text-align: right;">56</p> <p>1 It is -- we have a quarterly governance review of</p> <p>2 current intelligence threats reporting and the rules</p> <p>3 that have been established to mitigate those</p> <p>4 threats.</p> <p>5 Q Has any portion of those quarterly</p> <p>6 governance reviews been made public?</p> <p>7 A No.</p> <p>8 Q Has -- are those -- have any of those</p> <p>9 quarterly governance reviews ever been provided to</p> <p>10 Congress?</p> <p>11 MS. KONKOLY: Objection if there's anything</p> <p>12 in that answer that calls for SSI, but you can</p> <p>13 answer to the extent that you can.</p> <p>14 A I do not believe we provide the actual</p> <p>15 quarterly governance reviews to Congress. What we</p> <p>16 do is we brief Congress regarding our processes,</p> <p>17 regarding the current intelligence threats,</p> <p>18 regarding our establishment of rules. We have been</p> <p>19 doing this since the establishment of the program.</p> <p>20 I do not believe we are actually -- the briefings</p> <p>21 are not set up to be the same rated for audiences.</p> <p>22 Q When was Quiet Skies established?</p>



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<p style="text-align: right;">57</p> <p>1 MS. KONKOLY: Objection insofar as the</p> <p>2 answer calls for any information protected by SSI,</p> <p>3 but you can answer if you can.</p> <p>4 <b>A TSA began Quiet Skies in 2011.</b></p> <p>5 Q When was Silent Partner established?</p> <p>6 MS. KONKOLY: Same objection insofar as the</p> <p>7 question calls for any information protected by SSI.</p> <p>8 You can answer to the extent you can.</p> <p>9 <b>A 2010.</b></p> <p>10 Q When did the TSA begin assigning Federal Air</p> <p>11 Marshals to special mission coverage of Quiet Skies</p> <p>12 selectees?</p> <p>13 <b>A March of 2018.</b></p> <p>14 Q When did the TSA begin assigning Federal Air</p> <p>15 Marshals to special mission coverage of Silent</p> <p>16 Partner?</p> <p>17 MS. KONKOLY: Objection. That question</p> <p>18 calls for information protected by SSI, and I'm</p> <p>19 going to instruct the witness not to answer on that</p> <p>20 ground.</p> <p>21 Q Does the TSA assign Federal Air Marshals to</p> <p>22 special mission coverage of the Silent Partner</p>	<p style="text-align: right;">59</p> <p>1 questions regarding the document.</p> <p>2 MS. HOMER: Any questions?</p> <p>3 MS. GREENBAND: Can we take a 20-second</p> <p>4 break?</p> <p>5 MS. HOMER: Yes.</p> <p>6 MR. ABBAS: Do you need us to leave the</p> <p>7 room?</p> <p>8 MS. KONKOLY: We can leave.</p> <p>9 MS. HOMER: Okay, you'll leave. We'll stay</p> <p>10 right here.</p> <p>11 THE VIDEOGRAPHER: Please stand by. We are</p> <p>12 going off the record. The time is 12:01 p.m.</p> <p>13 (Off the record.)</p> <p>14 THE VIDEOGRAPHER: We are back on the</p> <p>15 record. The time is 12:03 p.m.</p> <p>16 MS. KONKOLY: All right. Counsel, would you</p> <p>17 mind clarifying the document at issue and where you</p> <p>18 obtained it to include it among the materials that</p> <p>19 you identified for questioning at this deposition?</p> <p>20 MS. HOMER: Yes. So what has been marked as</p> <p>21 Exhibit 3 is a document that was published by the</p> <p>22 Boston Globe on July 28, 2018, and it was included</p>
<p style="text-align: right;">58</p> <p>1 listees?</p> <p>2 MS. KONKOLY: Again, I'm objecting on the</p> <p>3 basis of SSI and instructing the witness not to</p> <p>4 answer.</p> <p>5 Q Has the TSA ever informed Congress about</p> <p>6 whether or not it assigns Federal Air Marshals to</p> <p>7 special mission coverage of Silent Partner</p> <p>8 selectees?</p> <p>9 MS. KONKOLY: I'm going to object on the</p> <p>10 basis of SSI and instruct the witness not to answer.</p> <p>11 Q I'd like to look at what's now tab three in</p> <p>12 your binder, which is a March 13, 2018, TSA bulletin</p> <p>13 or at least purports to be, and ask the court</p> <p>14 reporter to mark it as Exhibit 3.</p> <p>15 (Froemling Deposition Exhibit 3 was</p> <p>16 marked for identification and attached to the</p> <p>17 transcript.)</p> <p>18 Q Ms. Froemling, have you seen this document</p> <p>19 before?</p> <p>20 MS. KONKOLY: I am going to object on the</p> <p>21 basis of SSI, potentially law enforcement privilege,</p> <p>22 and I'm instructing the witness not to answer any</p>	<p style="text-align: right;">60</p> <p>1 in plaintiff's motion to compel materials as Exhibit</p> <p>2 B.</p> <p>3 MS. KONKOLY: Okay. So to clarify, it was</p> <p>4 among the materials that was identified by you in</p> <p>5 preparation for this deposition?</p> <p>6 MS. HOMER: Yes. I specifically identified</p> <p>7 the Boston Globe July 28 article prior to this</p> <p>8 deposition, and this is hyperlinked within that</p> <p>9 article, and there's an image of it and it is quoted</p> <p>10 extensively.</p> <p>11 MS. KONKOLY: Okay. If you could ask the</p> <p>12 question again or have it read back, either way.</p> <p>13 BY MS. HOMER:</p> <p>14 Q Okay. Ms. Froemling, have you ever seen</p> <p>15 this document before?</p> <p>16 THE WITNESS: I can answer?</p> <p>17 MS. KONKOLY: Yeah. You can -- yes or no.</p> <p>18 <b>A Yes.</b></p> <p>19 Q Did you see this document in connection with</p> <p>20 the Boston Globe reporting just discussed?</p> <p>21 MS. KONKOLY: I'm going to object insofar as</p> <p>22 the full -- insofar as the answer calls for any</p>

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<p style="text-align: right;">61</p> <p>1 information protected by SSI, but you can answer yes 2 or no.</p> <p>3 <b>A Yes, as part of the exhibit provided for</b> 4 <b>this deposition.</b></p> <p>5 Q Is this an official TSA document?</p> <p>6 MS. KONKOLY: And I'm going to object on the 7 basis of SSI, potentially law enforcement privilege, 8 and instruct the witness not to answer that 9 question.</p> <p>10 Q At the top left of the document, is that the 11 Federal Air Marshal Service seal?</p> <p>12 MS. KONKOLY: Objection on the basis of SSI. 13 I'm going to instruct the witness not to answer that 14 question.</p> <p>15 Q On the top right of the document, is that a 16 TSA seal?</p> <p>17 MS. KONKOLY: I'm going to again object on 18 the basis of SSI and instruct the witness not to 19 answer.</p> <p>20 Q Does the top of this document state that it 21 is a Transportation Security Administration 22 document?</p>	<p style="text-align: right;">63</p> <p>1 protected by SSI, and I'm instructing the witness 2 not to answer.</p> <p>3 Q Does the TSA have any internal policy 4 documents about the Quiet Skies program?</p> <p>5 MS. KONKOLY: Objection insofar as the 6 complete answer would call for information protected 7 by SSI, but you can answer yes or no.</p> <p>8 <b>A Yes.</b></p> <p>9 Q Is this one of those documents?</p> <p>10 MS. KONKOLY: Objection on the basis of SSI. 11 I'm instructing the witness not to answer that 12 question.</p> <p>13 Q All right. You've previously testified that 14 the Federal Air Marshal special mission coverage for 15 Quiet Skies selectees began in March 2018, correct?</p> <p>16 <b>A Yes.</b></p> <p>17 Q Did it begin specifically on March 13, 2018?</p> <p>18 MS. KONKOLY: I'm going to object to that 19 question as calling for SSI, and I'm going to 20 instruct the witness not to answer.</p> <p>21 Q Your declaration -- we were at paragraph ten 22 a minute ago -- stated that the TSA adopt rules to</p>
<p style="text-align: right;">62</p> <p>1 MS. KONKOLY: You're --</p> <p>2 Q Let me clarify that. At the top of the 3 document do the words "Transportation Security 4 Administration Office of Law Enforcement/Federal Air 5 Marshal Service" appear?</p> <p>6 <b>A Yes.</b></p> <p>7 Q Okay. And do you understand that this 8 document purports to be titled, in this top gray bar 9 that's somewhat hard to read, "Information bulletin 10 Quiet Skies selectees"?</p> <p>11 MS. KONKOLY: I'm going to object that is 12 very difficult to read from this copy what is in 13 that bar. If you can read it and --</p> <p>14 <b>A To the extent I can see that that matches</b> 15 <b>what you just stated, yes.</b></p> <p>16 Q Okay. And the first bold heading below that 17 gray bar says, "TSA's Quiet Skies Program," correct?</p> <p>18 <b>A It is listed there, yes.</b></p> <p>19 Q Does the TSA have an internal bulletin 20 regarding the Quiet Skies program?</p> <p>21 MS. KONKOLY: Objection insofar as -- 22 objection, the answer calls for information</p>	<p style="text-align: right;">64</p> <p>1 mitigate the threat posed by -- and now I'm going to 2 quote -- "unknown or partially known terrorists 3 based on current intelligence on terrorist travel 4 and tradecraft." Is that correct, your declaration 5 said that?</p> <p>6 <b>A Yes, my declaration says that we need to</b> 7 <b>mitigate the threat to commercial aviation posed by</b> 8 <b>unknown or partially known terrorists based on</b> 9 <b>analysis of current intelligence and terrorist</b> 10 <b>travel and tradecraft.</b></p> <p>11 Q Okay. And then turning back to Exhibit 3, 12 the first full, plain text paragraph, this exhibit 13 says that, quote, "The purpose of the Quiet Skies 14 program is to mitigate the threat to commercial 15 aviation posed by unknown or partially known 16 terrorists." Did I read that correctly?</p> <p>17 <b>A You did.</b></p> <p>18 Q Okay. And then the sentence goes on and 19 says that this is, quote, based on analysis of 20 terrorist travel trends, comma, tradecraft and 21 associations. Did I read that correctly?</p> <p>22 <b>A You did read it correctly.</b></p>

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<p style="text-align: right;">65</p> <p>1 Q Is an individual's associations a factor</p> <p>2 considered by Quiet Skies selectees rules?</p> <p>3 MS. KONKOLY: Objection, that question calls</p> <p>4 for information protected by SSI, and I'm going to</p> <p>5 instruct the witness not to answer.</p> <p>6 Q Skipping down in Exhibit 3 to the third</p> <p>7 bullet point, it states, "Quiet Skies rules target</p> <p>8 specific travel patterns or affiliations." Did I</p> <p>9 read that correctly?</p> <p>10 A Yes.</p> <p>11 Q Are an individual's affiliations a factor</p> <p>12 considered by Quiet Skies rules to designate them as</p> <p>13 high-risk passengers?</p> <p>14 MS. KONKOLY: And I'm objecting on the basis</p> <p>15 of SSI and instructing the witness not to answer</p> <p>16 that question. Let me also object on the basis of</p> <p>17 law enforcement and provide the same instruction on</p> <p>18 that basis as well.</p> <p>19 Q Skipping down to -- on Exhibit 3, beneath</p> <p>20 where it says, "Special Mission Coverage," it</p> <p>21 states, "Quiet Skies selectees are different from</p> <p>22 traditional SMC subjects because they are not under</p>	<p style="text-align: right;">67</p> <p>1 of SSI and instructing the witness not to answer</p> <p>2 that question.</p> <p>3 Q Do traditional special mission coverage</p> <p>4 subjects include individuals on the selectee list?</p> <p>5 MS. KONKOLY: I'm again objecting as to</p> <p>6 scope and objecting as to SSI and instructing the</p> <p>7 witness not to answer.</p> <p>8 Q Do traditional special mission coverage</p> <p>9 subjects include individuals on the expanded</p> <p>10 selectee list?</p> <p>11 MS. KONKOLY: Again, objection as to scope;</p> <p>12 objection, SSI; and I'm instructing the witness not</p> <p>13 to answer.</p> <p>14 Q What is the name of the policy manual that</p> <p>15 TSA has that includes information on Quiet Skies?</p> <p>16 MS. KONKOLY: Objection, vague. Objection</p> <p>17 insofar as the answer calls for information</p> <p>18 protected by SSI. And I'm also going to object to</p> <p>19 foundation.</p> <p>20 MS. HOMER: That's a fair objection. Let me</p> <p>21 start over, though I do think I asked that earlier.</p> <p>22 Q Does the TSA have any policy or procedure</p>
<p style="text-align: right;">66</p> <p>1 investigation by any agency and are not in the</p> <p>2 terrorist screening database." Did I read that</p> <p>3 correctly?</p> <p>4 A Yes.</p> <p>5 Q What is a traditional special mission</p> <p>6 coverage subject?</p> <p>7 MS. KONKOLY: Objection. That question</p> <p>8 calls for information protected by SSI, and I'm</p> <p>9 going to instruct the witness not to answer.</p> <p>10 Q Do the Federal Air Marshals monitor every</p> <p>11 individual on the TSDB who flies on a commercial</p> <p>12 aircraft?</p> <p>13 MS. KONKOLY: I'm going to first object as</p> <p>14 to scope, as that being outside of the scope of the</p> <p>15 designated topics for this deposition, but I'm also</p> <p>16 going to object on the basis of SSI, and I instruct</p> <p>17 the witness not to answer based on that ground.</p> <p>18 Q Do traditional special mission coverage</p> <p>19 subjects include individuals on the no-fly list?</p> <p>20 MS. KONKOLY: I'm going to again object as</p> <p>21 to scope. That would be outside of the designated</p> <p>22 topics again. And I'm again objecting on the basis</p>	<p style="text-align: right;">68</p> <p>1 manuals it provides to its employees regarding the</p> <p>2 Quiet Skies program?</p> <p>3 MS. KONKOLY: Objection insofar as the</p> <p>4 question calls for any information protected by SSI,</p> <p>5 but you can answer that one to the extent you can.</p> <p>6 A Yes.</p> <p>7 Q What are the names of those manuals?</p> <p>8 MS. KONKOLY: Again, objection insofar as</p> <p>9 the question calls for information protected by SSI.</p> <p>10 You can answer that one to the extent you can. I</p> <p>11 will again interpose the question is vague.</p> <p>12 A I do not actually know the name of given</p> <p>13 manuals. We do have policy documents regarding the</p> <p>14 implementation of our Quiet Skies. I don't know the</p> <p>15 name.</p> <p>16 Q What is the name of the policy document that</p> <p>17 implements Quiet Skies?</p> <p>18 MS. KONKOLY: Same objections, also asked</p> <p>19 and answered.</p> <p>20 A I do not know the name of the document.</p> <p>21 Q Does the TSA have policy documents regarding</p> <p>22 the operation of the Silent Partner program?</p>

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<p>69</p> <p>1 MS. KONKOLY: Again, objection insofar as</p> <p>2 the answer calls for any information protected by</p> <p>3 SSI; objection, vague; but you can answer to the</p> <p>4 extent that you can.</p> <p>5 <b>A Yes.</b></p> <p>6 Q What are the names of the policy documents</p> <p>7 that TSA has regarding the implementation of the</p> <p>8 Silent Partner program?</p> <p>9 MS. KONKOLY: Same objections, vague, and</p> <p>10 insofar as it calls for any information protected by</p> <p>11 SSI, but you can answer if you can.</p> <p>12 <b>A I do not know the specific name of the</b></p> <p>13 <b>document. I think the best I can say is --</b></p> <p>14 <b>referring back to my prior statement is that it's</b></p> <p>15 <b>primarily memorialized in the memo of our</b></p> <p>16 <b>implementation to these rules. I do not know the</b></p> <p>17 <b>name of the document.</b></p> <p>18 Q Does the TSA consider family members of TSDB</p> <p>19 listees to be unknown or partially known terrorists?</p> <p>20 MS. KONKOLY: Objection as to scope.</p> <p>21 Objection, that question calls for information</p> <p>22 protected by SSI, and also the law enforcement</p>	<p>71</p> <p>1 Q Does being an individual listed in the</p> <p>2 contact list of a TSDB individual's phone form a</p> <p>3 basis to trigger any high-risk rules?</p> <p>4 MS. KONKOLY: I'm, again, objecting on the</p> <p>5 basis of the law enforcement privilege and SSI, and</p> <p>6 I'm again instructing the witness not to answer that</p> <p>7 question.</p> <p>8 Q In your declaration you referred to current</p> <p>9 intelligence on terrorist travel and tradecraft.</p> <p>10 MS. KONKOLY: Can you please identify the</p> <p>11 paragraph?</p> <p>12 Q Yeah, so paragraph ten. It was where we</p> <p>13 were earlier, so Exhibit 2, paragraph ten. So I'm</p> <p>14 going to elide a bit of the sentence, but it says</p> <p>15 TSA conducted its own review of the existing threats</p> <p>16 to aviation security, ellipses, based on analysis of</p> <p>17 current intelligence on terrorist travel and</p> <p>18 tradecraft.</p> <p>19 Do you see the portion I'm referring to?</p> <p>20 <b>A Yes.</b></p> <p>21 Q Okay.</p> <p>22 MS. KONKOLY: Could you actually read the</p>
<p>70</p> <p>1 privilege. You can answer that one to the extent</p> <p>2 that you can.</p> <p>3 <b>A I'm sorry, could you repeat the question?</b></p> <p>4 Q Does the TSA consider family members of TSDB</p> <p>5 listees to be unknown or partially known terrorists?</p> <p>6 MS. KONKOLY: Same objections, but you can</p> <p>7 answer to the extent that you can.</p> <p>8 <b>A So as I discussed on the unknown or</b></p> <p>9 <b>partially known, it is more related to whatever</b></p> <p>10 <b>particular threat is identified to aviation or</b></p> <p>11 <b>homeland security. So to the extent, if it also so</b></p> <p>12 <b>happens that they -- individuals are designated as</b></p> <p>13 <b>higher risk and are designated for enhanced</b></p> <p>14 <b>screening, by virtue of that they may. But TSA</b></p> <p>15 <b>directly does not just say, okay, these are our</b></p> <p>16 <b>unknown or partially known, therefore all family</b></p> <p>17 <b>members, to your question.</b></p> <p>18 Q Does being a family member of a TSDB listee</p> <p>19 trigger the application of any high-risk rules?</p> <p>20 MS. KONKOLY: Objection on the basis of SSI,</p> <p>21 the law enforcement privilege, and I'm instructing</p> <p>22 the witness not to answer that question.</p>	<p>72</p> <p>1 entire sentence for context?</p> <p>2 Q Sure. "TSA conducted its own review of the</p> <p>3 existing threats to aviation security and determined</p> <p>4 that it needed to mitigate the threat to commercial</p> <p>5 aviation posed by unknown or partially known</p> <p>6 terrorists based on analysis of current intelligence</p> <p>7 on terrorist travel and tradecraft."</p> <p>8 Did I read that sentence correctly?</p> <p>9 <b>A Yes.</b></p> <p>10 Q What is the definition of terrorist</p> <p>11 tradecraft?</p> <p>12 MS. KONKOLY: Objection insofar as that</p> <p>13 answer calls for information protected by the law</p> <p>14 enforcement privilege and SSI, and I'm instructing</p> <p>15 the witness not to answer that question.</p> <p>16 Q Can you give me any examples even at a high</p> <p>17 level of what constitutes terrorist tradecraft?</p> <p>18 MS. KONKOLY: I am going to again object on</p> <p>19 the basis of SSI and the law enforcement privilege,</p> <p>20 and I'm instructing the witness not to answer that</p> <p>21 question.</p> <p>22 Q Turning back to Exhibit 3, does this</p>

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<p style="text-align: right;">73</p> <p>1 document reflect TSA policy -- that won't work. Let 2 me start over.</p> <p>3 Do the details about the Quiet Skies program 4 you disclosed in your declaration match the 5 information in Exhibit 3?</p> <p>6 MS. KONKOLY: I'm going to object on the 7 basis of SSI and the law enforcement privilege and 8 instruct the witness not to answer that question.</p> <p>9 Q What other Federal Government agencies are 10 involved in the creation of the TSA's risk-based, 11 intelligence-driven rules?</p> <p>12 MS. KONKOLY: Objection insofar as that 13 answer calls for information protected by the law 14 enforcement privilege and SSI, as well as the state 15 secrets privilege potentially, and I'm instructing 16 the witness not to answer that question.</p> <p>17 Q What other federal agencies provide 18 intelligence that inform TSA's creation of 19 risk-based rules?</p> <p>20 MS. KONKOLY: I'm going to again object 21 based on the law enforcement privilege, SSI, 22 potentially state secrets privilege, and I'm going</p>	<p style="text-align: right;">75</p> <p>1 Q Does the TSA work with any foreign 2 government agencies to create or implement its 3 high-risk rules?</p> <p>4 MS. KONKOLY: I'm going to object on the 5 basis of SSI, law enforcement privilege. You can 6 answer that one to the extent that you can.</p> <p>7 <b>A So also as discussed previously, because you 8 said create and implement, I want to make sure the 9 way I'm interpreting it is TSA independently 10 assesses the current intelligence to identify 11 threats. TSA independently creates the rules, 12 coordinates with CBP.</b></p> <p>13 <b>We do not coordinate with any, as stated 14 earlier, other federal agencies nor foreign 15 governments to create the rules. When you state 16 implement, as I discussed previously, we identify 17 these rules, identify passengers that present a 18 higher risk and therefore require enhanced 19 screening.</b></p> <p>20 <b>So to the extent that passengers abroad 21 require enhanced screening, those foreign 22 governments may be involved in the -- if you want to</b></p>
<p style="text-align: right;">74</p> <p>1 to again instruct the witness not to answer.</p> <p>2 Q What federal agencies assist with the 3 implementation of the TSA's high-risk rules?</p> <p>4 MS. KONKOLY: Objection insofar as that 5 calls for information protected by SSI or the law 6 enforcement privilege, but you can answer that one 7 to the extent that you can.</p> <p>8 <b>A Sure. As discussed previously, TSA does 9 coordinate with CBP to implement its -- TSA's 10 derived rules into CBP's system to identify 11 passengers that meet TSA's higher risk rules.</b></p> <p>12 Q Aside from CBP, do any other federal 13 agencies assist with the implementation of TSA's 14 high-risk rules?</p> <p>15 MS. KONKOLY: I'm going to again object 16 based on SSI and the law enforcement privilege, but 17 you can answer that one to the extent that you can.</p> <p>18 <b>A So for the actual creation of the rules, 19 it's TSA coordinating with CBP because we implement 20 our rules in CBP's system. So, no, we do not work 21 with other agencies to create TSA's high-risk 22 passenger rules.</b></p>	<p style="text-align: right;">76</p> <p>1 <b>say implementation in the conducting the actual 2 screening activities, physical screening activities.</b></p> <p>3 Q What federal agencies have the authority to 4 approve or disapprove specific risk-based rules?</p> <p>5 MS. KONKOLY: Objection insofar as that 6 question calls for any information protected by SSI, 7 but you can answer that one to the extent that you 8 can.</p> <p>9 <b>A So TSA-specific, high-risk-based rules, it 10 is under our administrator's authority to -- sorry, 11 was the word "approve" or "implement"?</b></p> <p>12 Q Approve or disapprove.</p> <p>13 <b>A -- approve and disapprove the rules.</b></p> <p>14 Q Can the Secretary of the Department of 15 Homeland Security override the TSA administrator's 16 determination?</p> <p>17 <b>A So to the -- sorry.</b></p> <p>18 MS. KONKOLY: Let me just object. To the 19 extent that there is any information, the answer 20 calls for information protected by SSI, but you can 21 answer to the extent that you can.</p> <p>22 <b>A Right. So generally speaking, the TSA is a</b></p>

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<p style="text-align: right;">77</p> <p><b>1 component of the Department of Homeland Security.</b></p> <p><b>2 The Secretary for Homeland Security therefore has</b></p> <p><b>3 the same authorities as our administrator, and our</b></p> <p><b>4 administrator does report to the Secretary of</b></p> <p><b>5 Homeland Security, so, she therefore, yes, does have</b></p> <p><b>6 authority.</b></p> <p>7 Q Is there any individual outside of the</p> <p>8 Department of Homeland Security who has authority to</p> <p>9 approve or disapprove specific TSA risk-based rules?</p> <p>10 MS. KONKOLY: I'm going to object that this</p> <p>11 line of questioning calls for a legal conclusion,</p> <p>12 also insofar as the answer implicates any SSI. You</p> <p>13 can answer to the extent that you can.</p> <p><b>14 A So I'm trying to -- so no other federal</b></p> <p><b>15 agency approves or disapproves TSA's high-risk</b></p> <p><b>16 rules, to your question was, does any other</b></p> <p><b>17 authority --</b></p> <p>18 Q Outside of DHS.</p> <p><b>19 A -- outside of DHS.</b></p> <p>20 MS. KONKOLY: Same objections.</p> <p><b>21 A Can I get like ten seconds just to clarify</b></p> <p><b>22 if I state something, take a break, just to confirm?</b></p>	<p style="text-align: right;">79</p> <p>(The Reporter read the record as</p> <p>2 follows: Is there any individual outside of the</p> <p>3 Department of Homeland Security who has authority to</p> <p>4 approve or disapprove specific TSA risk-based</p> <p>5 rules?)</p> <p>6 MS. KONKOLY: And I'm just going to again</p> <p>7 object that that calls for a legal conclusion, but</p> <p>8 you can answer to the extent that you can.</p> <p><b>9 A So I'm not the legal authority, but I</b></p> <p><b>10 suppose in the broader scheme of just overall</b></p> <p><b>11 authorities it could be the President that would</b></p> <p><b>12 also have authorities to approve or disapprove. But</b></p> <p><b>13 I want to clarify that the administrator is the one</b></p> <p><b>14 with the authority, TSA.</b></p> <p>15 Q What federal agencies provide input into the</p> <p>16 creation of the TSA's high-risk rules?</p> <p>17 MS. KONKOLY: I'm going to object insofar as</p> <p>18 that question calls for information protected by SSI</p> <p>19 and also object on grounds of vagueness. You can</p> <p>20 answer to the extent that you can.</p> <p><b>21 A So it is -- to the extent that I can answer,</b></p> <p><b>22 TSA conducts an independent assessment of current</b></p>
<p style="text-align: right;">78</p> <p>1 MS. HOMER: Yeah. Can we go off the record?</p> <p>2 THE VIDEOGRAPHER: Stand by for a moment.</p> <p>3 MS. KONKOLY: Can we take just a five-minute</p> <p>4 break actually?</p> <p>5 MS. HOMER: Yeah, that's fine.</p> <p>6 THE VIDEOGRAPHER: All right. Well, then,</p> <p>7 I'm going to change tapes, so please stand by.</p> <p>8 MS. HOMER: Okay.</p> <p>9 THE VIDEOGRAPHER: This marks the end of</p> <p>10 disc number one in the videotaped deposition of</p> <p>11 Hoa-y Tran Froemling. We are going off the record</p> <p>12 at 12:26 p.m.</p> <p>13 (Off the record.)</p> <p>14 THE VIDEOGRAPHER: This marks the beginning</p> <p>15 of disc number two. We are back on the record at</p> <p>16 12:48 p.m.</p> <p>17 MS. HOMER: Counsel, you said you had some</p> <p>18 clarifications? Or we should answer the --</p> <p>19 MS. KONKOLY: We had an open question so if</p> <p>20 we could close that.</p> <p>21 MS. HOMER: Could you read back the question</p> <p>22 before we left?</p>	<p style="text-align: right;">80</p> <p><b>1 intelligence threat reporting to derive its rules.</b></p> <p><b>2 As far as input, this is more of back to the</b></p> <p><b>3 discussion of oversight of we do review on a</b></p> <p><b>4 quarterly basis with DHS, civil rights and</b></p> <p><b>5 liberties, with privacy and our chief counsel,</b></p> <p><b>6 general counsel with the department regarding TSA's</b></p> <p><b>7 implementation of the rules.</b></p> <p>8 Q What other --</p> <p>9 MS. KONKOLY: Did you want to -- could we do</p> <p>10 those clarifications?</p> <p>11 MS. HOMER: Oh, I'm sorry. Please go ahead.</p> <p>12 MS. KONKOLY: Okay. Before we lose track of</p> <p>13 those.</p> <p>14 Ms. Froemling, did you want to offer any</p> <p>15 clarification regarding the testimony you provided</p> <p>16 earlier this morning regarding the definition of --</p> <p>17 or your statement regarding an unknown or partially</p> <p>18 known terrorist --</p> <p>19 THE WITNESS: Yes.</p> <p>20 MS. KONKOLY: -- as you referenced that term</p> <p>21 in your declaration?</p> <p>22 THE WITNESS: Yes. So I believe the</p>

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<p style="text-align: right;">81</p> <p>1 question -- two parts to the question. For unknown 2 and partially known terrorists and terrorist 3 activities, TSA devises rules to identify passengers 4 that may present a high risk? 5 I want to be very clear that matching to one 6 of these rules does not mean that every individual 7 that matches to these rules are considered to be 8 unknown or partially known terrorists. These rules 9 are established to mitigate the threat from unknown 10 or partially known terrorists. That's part one. 11 And then the clarification to your question 12 of are family members on the TSDB considered to be 13 part of the unknown or partially known terrorist, 14 TSA -- no, TSA does not, again, automatically 15 consider family members of TSDB listees to be 16 unknown or partially known terrorists. So the two 17 tied together. 18 We establish rules to mitigate the threat 19 that's been identified to aviation, homeland 20 security, from unknown and partially known 21 terrorists, which may then identify passengers that 22 could present a higher level of risk. It is not one</p>	<p style="text-align: right;">83</p> <p>1 to the extent you can. 2 <b>A So it would depend on the particular threat,</b> 3 <b>so depending, because unknown can be -- unknown and</b> 4 <b>partially known is a broad term. Depending on the</b> 5 <b>threat it could be a broader -- so I think, yes, to</b> 6 <b>the extent of we do not know actual individuals</b> 7 <b>designated as unknown or partially known terrorists,</b> 8 <b>because at that point they would be known.</b> 9 <b>So to the extent that we identify a threat</b> 10 <b>we're establishing, that may encompass multiple</b> 11 <b>different areas and different things. I'm sorry.</b> 12 <b>It's a very broad question so to the extent I can,</b> 13 <b>I'm trying to answer it. It may depending on the</b> 14 <b>particular threat.</b> 15 MS. HOMER: Did you have another cleanup 16 question? 17 MS. KONKOLY: There were two more, if you 18 don't mind, quickly. 19 MS. HOMER: Okay. 20 MS. KONKOLY: Ms. Froemling, did you also 21 want to clarify your earlier testimony regarding the 22 potential existence of oversight reports related to</p>
<p style="text-align: right;">82</p> <p>1 for one equal. 2 BY MS. HOMER: 3 Q Are there any individuals that the TSA has 4 labeled that individual as an unknown or partially 5 known terrorist? 6 MS. KONKOLY: I'll object insofar as that 7 question calls for any information protected by SSI, 8 and vagueness, but you can answer to the extent that 9 you can. 10 <b>A So I think by definition, again, it's</b> 11 <b>unknown, partially known, so we do not know the</b> 12 <b>individuals. So all we could -- what we do is we</b> 13 <b>implement rules to identify passengers who may</b> 14 <b>present a higher risk to mitigate the threat from</b> 15 <b>unknown or partially known.</b> 16 Q So would it be fair to say that the unknown 17 or partially known terrorist label, like encompasses 18 a broad group of high-risk characteristics but not 19 necessarily specific persons? 20 MS. KONKOLY: Objection insofar as the 21 answer calls for anything protected by SSI, but -- 22 and law enforcement privilege, but you can answer it</p>	<p style="text-align: right;">84</p> <p>1 the quarterly reviews of the rules programs? 2 THE WITNESS: Right. We have a quarterly 3 review with our DHS oversight offices. There's no 4 actual report that I'm aware of that TSA creates as 5 a result of those quarterly governance reviews with 6 our DHS civil rights and civil liberties and then 7 privacy, general counsel, et cetera. 8 MS. KONKOLY: And did you also want to 9 clarify your testimony from earlier this morning 10 with respect to foreign government involvement with 11 implementation of the risk-based rules? 12 THE WITNESS: Right. I wanted to make sure 13 it's very, very clear. In the beginning, earlier 14 this morning, I discussed TSA as part of a secure 15 flight provides back to air carriers for overseas, 16 for international travel of those passengers that 17 require enhanced screening. 18 It could be for multiple reasons not just 19 whether they were matched to a rule or matches to 20 individuals on the -- a selectee. It could be 21 random, multiple reasons. Air carriers are aware of 22 passengers have been designated for enhanced</p>

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<p style="text-align: right;">85</p> <p>1 screening. They don't know any other information.  2 They don't know the reason why.  3 So when it goes to the follow-on question of  4 are any foreign governments involved in the  5 implementation of rules I want to go back to they  6 are aware, if they are a part -- with the carriers  7 conducting any of the physical screening related to  8 enhanced screening, they are aware if passengers  9 have been designated for enhanced screening. They  10 are not made aware that these individual passengers  11 have been matches to high-risk rules versus any  12 other reason.  13 Q So foreign airlines or partners or  14 governments would not know that a specific  15 individual was a Quiet Skies or Silent Partner  16 selectee?  17 MS. KONKOLY: Objection insofar as that  18 question calls for any information protected by SSI,  19 but you can answer to the extent you can.  <b>20 A That is correct, when we are providing back</b>  <b>21 the indicator for enhanced screening that is all</b>  <b>22 that is provided to them.</b></p>	<p style="text-align: right;">87</p> <p>1 to scope of the designated topics for this  2 deposition. I'm going to object on grounds of  3 vagueness, also SSI and the law enforcement  4 privilege. You can answer if you know, to the  5 extent that you can.  <b>6 A I do not believe I know other than the fact</b>  <b>7 that they -- a passenger, as we discussed in prior</b>  <b>8 testimony, the carrier would receive information and</b>  <b>9 ask to put on the boarding pass a designation for</b>  <b>10 enhanced screening, so to the extent that that</b>  <b>11 boarding pass is visible to the passenger and</b>  <b>12 others. I don't know that I can answer regarding</b>  <b>13 foreign governments sharing that designation on a</b>  <b>14 boarding pass.</b>  15 Q So going back to where we were earlier, do  16 members of the watch listing advisory council  17 provide recommendations for input to the TSA about  18 the creation of specific high-risk rules?  19 MS. KONKOLY: I'm going to object insofar as  20 the answer calls for any information protected by  21 SSI or the law enforcement privilege, but you can  22 answer if you can.</p>
<p style="text-align: right;">86</p> <p>1 Q What restrictions are there on foreign  2 governments sharing information about which  3 passengers have been identified as the U.S. as  4 higher risk and requiring enhanced screening?  5 MS. KONKOLY: I'm going to object as to  6 scope. I'm going to object on the basis of SSI and  7 the law enforcement privilege. But you can answer  8 if you know and to the extent that you can.  <b>9 A I'm not sure. So the question is what</b>  <b>10 restrictions on foreign governments are -- I'm</b>  <b>11 sorry.</b>  12 Q So let me break it down. You just  13 testified, correct, that the foreign government is  14 aware that an individual requires enhanced  15 screening, correct?  <b>16 A The foreign party. If the government is</b>  <b>17 involved with the air carrier and performing</b>  <b>18 screening, then yes.</b>  19 Q Okay. What restrictions are there to  20 prevent the foreign party from sharing that  21 high-risk designation more broadly?  22 MS. KONKOLY: I'm going to again object as</p>	<p style="text-align: right;">88</p> <p><b>1 A No. As part of my declaration, just to</b>  <b>2 reiterate, the watch listing advisory council is not</b>  <b>3 involved in TSA or provide input into TSA's</b>  <b>4 determination of high-risk rules.</b>  5 Q Do any members of the watch listing advisory  6 council discuss the specific criteria for TSA  7 high-risk rules with the TSA in any way?  8 MS. KONKOLY: I'm going to object on the  9 basis of the deliberative process privilege insofar  10 as the information calls -- the question calls for  11 information protected by SSI or the law enforcement  12 privilege, but you can answer.  <b>13 A Let me answer this -- in the sense of acting</b>  <b>14 as a member of the watch listing advisory</b>  <b>15 committee -- council, sorry, they do not discuss</b>  <b>16 regarding input or creation of the rules or have any</b>  <b>17 part in formulation and TSA's implementation of the</b>  <b>18 rules as to whether any member may have discussed it</b>  <b>19 or brought it up in its awareness if TSA has</b>  <b>20 implemented it. It may have occurred but not in a</b>  <b>21 formal capacity of providing any advisory or other</b>  <b>22 capacity.</b></p>



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<p style="text-align: right;">89</p> <p>1 <b>Also CBP is also a partner, so to the extent</b>  2 <b>not as a watch listing advisory member but in its</b>  3 <b>component as CBP, TSA obviously does implement its</b>  4 <b>rules in CBP's systems for high-risk passengers.</b>  5 Q What federal agencies have access to or  6 knowledge of the specific criteria of specific  7 high-risk rules created by the TSA?  8 MS. KONKOLY: Objection insofar as that  9 question calls for any information protected by SSI  10 or the law enforcement privilege. You can answer if  11 you can.  12 <b>A I'm sorry, what members of any federal</b>  13 <b>agency -- I'm sorry.</b>  14 Q Yeah. What federal agencies know what the  15 TSA's high-risk rules are?  16 MS. KONKOLY: Same objections, and I'll add  17 that Ms. Froemling is here to testify on behalf of  18 TSA only as well today.  19 <b>A So I can speak in the capacity of CBP is</b>  20 <b>another federal agency. TSA is obviously</b>  21 <b>implementing its rules in CBP's systems. TSA also</b>  22 <b>reviews the rules with DHS, privacy, civil rights,</b></p>	<p style="text-align: right;">91</p> <p>1 any information protected by SSI or law enforcement  2 implicated in that answer. You can answer.  3 <b>A No, I do not believe TSA gives our rules to</b>  4 <b>the TSC.</b>  5 Q Does the TSA give its rules to the FBI?  6 MS. KONKOLY: Objection insofar as the  7 answer calls for any information protected by SSI or  8 the law enforcement privilege, but you can answer if  9 you know.  10 <b>A No, I do not believe TSA gives its rules to</b>  11 <b>the FBI.</b>  12 Q Are Federal Air Marshals automatically  13 assigned to flights containing Quiet Skies  14 selectees?  15 MS. KONKOLY: Objection. That calls for  16 information protected by SSI. And you can answer to  17 the extent -- you can answer to the extent that you  18 can without waiving the privilege.  19 <b>A Okay. At a high level, depending on air</b>  20 <b>marshal availability, Federal Air Marshals are</b>  21 <b>assigned on flights that have Quiet Skies high-risk</b>  22 <b>passengers on them.</b></p>
<p style="text-align: right;">90</p> <p>1 <b>and liberties, general counsel bodies. As to other</b>  2 <b>federal agencies, I do not --</b>  3 Q Does the terrorist --  4 <b>A -- know of the actual rules.</b>  5 Q Does the Terrorist Screening Center know  6 what the TSA's specific high-risk rules are?  7 MS. KONKOLY: I'm going to again object  8 insofar as the answer implicates any SSI, object  9 vagueness, and, again, reiterate that Ms. Froemling  10 is here to testify on behalf of TSA only. You can  11 answer if you know. Let me also add law enforcement  12 to the potential grounds.  13 <b>A Generally speaking, no, in the sense of us</b>  14 <b>sharing or reviewing rules with TSC. In the -- they</b>  15 <b>are aware of TSA's implementing high-risk passenger</b>  16 <b>rules overall and our process, but I do not believe</b>  17 <b>we review -- we do not review our rules with the</b>  18 <b>TSC.</b>  19 Q Okay. So to clarify, the TSA does not give  20 details of the specific criteria for specific  21 high-risk rules to the Terrorist Screening Center?  22 MS. KONKOLY: Objection insofar as there is</p>	<p style="text-align: right;">92</p> <p>1 Q Who determines the specific assignments for  2 specific air marshals to specific flights?  3 MS. KONKOLY: Objection insofar as that  4 answer calls for information protected by SSI. You  5 can answer to the extent you can without waiving.  6 <b>A At high level it's TSA and it's the Federal</b>  7 <b>Air Marshal's office.</b>  8 Q Are Federal Air Marshals automatically  9 assigned as soon as a Quiet Skies rule is triggered,  10 or is there a prioritization or discretionary  11 process regarding those assignments?  12 MS. KONKOLY: Objection insofar as that  13 question calls for information protected by SSI.  14 You can answer to the extent that you can.  15 <b>A So at a high level there's multiple factors</b>  16 <b>that go into the assignment of Federal Air Marshals</b>  17 <b>on flights and prioritization, availability,</b>  18 <b>multiple factors, logistics, everything.</b>  19 <b>So there is a process that would go into</b>  20 <b>effectively the prioritization based on Federal Air</b>  21 <b>Marshal availability to deploy FAMS on our high</b>  22 <b>risk -- high security risk flights.</b></p>

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<p style="text-align: right;">93</p> <p>1 Q Would you agree that human officials at the</p> <p>2 TSA exercise discretion regarding the prioritization</p> <p>3 of Federal Air Marshal assignments?</p> <p>4 MS. KONKOLY: Again, I'll object insofar as</p> <p>5 the answer calls for any information protected by</p> <p>6 SSI. You can answer that one to the extent you can.</p> <p>7 <b>A So at a high level there is human</b></p> <p>8 <b>involvement in the assignment of Federal Air</b></p> <p>9 <b>Marshals. So to the extent as performing their</b></p> <p>10 <b>duties there's a review and steps involved that is</b></p> <p>11 <b>not 100 percent all system generated in order to be</b></p> <p>12 <b>able to assign Federal Air Marshals to flights.</b></p> <p>13 Q What prevents the TSA officials who are</p> <p>14 making the final air marshal assignments from using</p> <p>15 a race or religion as a factor in those assignments?</p> <p>16 MS. KONKOLY: Objection, vague.</p> <p>17 <b>A So TSA does not use race or religion in its</b></p> <p>18 <b>rules to identify high-risk passengers. So to the</b></p> <p>19 <b>same extent FAMS and scheduling as a part of that we</b></p> <p>20 <b>do not use race or religion in assignment of Federal</b></p> <p>21 <b>Air Marshals on flights.</b></p> <p>22 Q Has race or religion ever been a</p>	<p style="text-align: right;">95</p> <p>1 <b>I cannot speculate on --</b></p> <p>2 Q Does the TSA evaluate the effectiveness of</p> <p>3 Quiet Skies and Silent Partner?</p> <p>4 MS. KONKOLY: Objection insofar as the</p> <p>5 answer implicates any SSI, but you can answer.</p> <p>6 <b>A Yes, TSA is continually reviewing the</b></p> <p>7 <b>results of the rules, the high-risk passenger rules</b></p> <p>8 <b>that it implements. It also compares it continually</b></p> <p>9 <b>evaluating the current intelligence threat.</b></p> <p>10 <b>And as stated earlier, we have set</b></p> <p>11 <b>independent of TSA identifying passengers as being</b></p> <p>12 <b>Quiet Skies or Silent Partner higher risk, it has</b></p> <p>13 <b>been identified -- confirmed that individuals have</b></p> <p>14 <b>been added to the TSDB.</b></p> <p>15 <b>TSA has evaluated from an effectiveness</b></p> <p>16 <b>perspective, has also identified that Quiet Skies</b></p> <p>17 <b>passengers independent of being identified as a</b></p> <p>18 <b>Quiet Skies rules-based passenger have been added to</b></p> <p>19 <b>the TSDB subsequent to that at a higher rate than</b></p> <p>20 <b>any other passengers. So TSA -- yes, TSA does</b></p> <p>21 <b>evaluate the effectiveness of its high-risk rules.</b></p> <p>22 Q Can being flagged by a TSA high-risk rule</p>
<p style="text-align: right;">94</p> <p>1 consideration that a TSA employee or Federal Air</p> <p>2 Marshal has used --</p> <p>3 MS. KONKOLY: Objection.</p> <p>4 Q -- regarding their assignment?</p> <p>5 MS. KONKOLY: Objection, vague. Objection</p> <p>6 as to the scope of the designated topics for this</p> <p>7 deposition, but you can answer. Let me also object</p> <p>8 insofar as there's any SSI implicated in the answer,</p> <p>9 but you can answer.</p> <p>10 <b>A I can state that TSA at large does not use</b></p> <p>11 <b>race or religion in its identification of high-risk</b></p> <p>12 <b>passengers and assignments of flights.</b></p> <p>13 Q Has any TSA official ever used race or</p> <p>14 religion in the course of carrying out their</p> <p>15 assignment?</p> <p>16 MS. KONKOLY: I'm going to again object as</p> <p>17 to the scope of the designated topics for the</p> <p>18 deposition, object insofar as there is any SSI</p> <p>19 implicated in the answer, calls for speculation at</p> <p>20 some level. But you can answer.</p> <p>21 <b>A Not that I'm aware of by policy, by process,</b></p> <p>22 <b>policy operations, we do not use race or religion.</b></p>	<p style="text-align: right;">96</p> <p>1 constitute derogatory information supporting a</p> <p>2 nomination to the TSDB?</p> <p>3 MS. KONKOLY: I'm going to object insofar as</p> <p>4 that question calls for any information protected by</p> <p>5 SSI or the law enforcement privilege. You can</p> <p>6 answer to the extent that you can.</p> <p>7 <b>A No. To reiterate my statement in the</b></p> <p>8 <b>declaration, simply matching to rules to designate</b></p> <p>9 <b>high risk is not viewed as derogatory information to</b></p> <p>10 <b>be nominated into the TSDB. These rules are to</b></p> <p>11 <b>identify passengers that may present an elevated</b></p> <p>12 <b>risk.</b></p> <p>13 <b>It goes back to my clarification again of</b></p> <p>14 <b>simply matching to the rule. It does not constitute</b></p> <p>15 <b>that the individual is considered a terrorist or</b></p> <p>16 <b>considered the partially known terrorist direct. It</b></p> <p>17 <b>is an indication that these passengers present an</b></p> <p>18 <b>elevated risk.</b></p> <p>19 Q How does an individual who is identified as</p> <p>20 presenting an elevated risk end up on the TSDB?</p> <p>21 MS. KONKOLY: Objection as to scope.</p> <p>22 Objection insofar as the answer calls for any</p>


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<p style="text-align: right;">97</p> <p>1 information protected by the law enforcement 2 privilege or SSI. You can answer if you happen to 3 know, but -- to the extent you can. 4 <b>A For those that have been -- so each</b> 5 <b>individual that has been subsequently added, I</b> 6 <b>cannot speak to how, but I can speak definitively</b> 7 <b>that by virtue of just simply matching to a Quiet</b> 8 <b>Skies rule has not been reason to be nominated to</b> 9 <b>the TSDB.</b> 10 <b>There's multiple criteria and factors just</b> 11 <b>overall, regardless of high risk -- of -- regardless</b> 12 <b>of whether you've matched to a high-risk rule.</b> 13 <b>There's multiple criteria that must be met in order</b> 14 <b>to be added to the TSDB.</b> 15 Q Has a Quiet Skies or Silent Partner selectee 16 ever been nominated to the TSDB as a result of the 17 special mission coverage report about a specific 18 trip prepared by an air marshal? 19 MS. KONKOLY: I'm going to object. I 20 believe this question has been asked and answered. 21 Objection insofar as the question calls for any SSI 22 or law enforcement privilege information. You can</p>	<p style="text-align: right;">99</p> <p>1 but you can answer to the extent you can. 2 <b>A So the Federal Air Marshals data retention</b> 3 <b>of their activities is five years.</b> 4 Q Has the TSA prepared any reports on the 5 effectiveness of its risk-based rules? 6 MS. KONKOLY: Objection insofar as the 7 question calls for anything protected by SSI. You 8 can answer if you can. 9 <b>A There's, to my knowledge, no formal reports</b> 10 <b>of the effectiveness. We do -- our analysts do</b> 11 <b>review the results of rules and how they match to</b> 12 <b>examine are they meeting the current intelligence.</b> 13 <b>I'm not aware of formal reports regarding</b> 14 <b>effectiveness.</b> 15 Q How does the TSA determine that its rules 16 are effective? 17 MS. KONKOLY: Objection insofar as that 18 calls for any information protected by SSI, but you 19 can answer to the extent you can. 20 <b>A So TSA has been conducting analysis, as I</b> 21 <b>stated earlier, where we have identified separately,</b> 22 <b>not as a result of being identified as a match to a</b></p>
<p style="text-align: right;">98</p> <p>1 answer again to the extent you can. 2 <b>A No.</b> 3 Q How long does the TSA retain information on 4 passengers who have been flagged as a Quiet Skies or 5 Silent Partner selectee? 6 MS. KONKOLY: Objection insofar as the 7 question calls for any information protected by SSI. 8 You can answer that to the extent you can. 9 <b>A So the details of -- the detailed</b> 10 <b>information of matches to Quiet Skies and Silent</b> 11 <b>Partner rules are reviewed in the Office of</b> 12 <b>Intelligence -- TSA's Office of Intelligence</b> 13 <b>Analysis for two years.</b> 14 <b>As -- broadly, as part of our secure flight</b> 15 <b>data retention information, those -- just matches,</b> 16 <b>not details regarding the rules, to high-risk</b> 17 <b>passenger rules are retained for seven years.</b> 18 Q How long does the TSA retain any Federal Air 19 Marshal special mission coverage reports about Quiet 20 Skies or Silent Partner selectees? 21 MS. KONKOLY: I'll again object insofar as 22 the question calls for information protected by SSI,</p>	<p style="text-align: right;">100</p> <p>1 <b>Quiet Skies or Silent Partner rule. We have</b> 2 <b>identified that individuals that have matched have</b> 3 <b>independently been added to the TSDB, again, as a</b> 4 <b>part of its validation of effectiveness. So</b> 5 <b>that's -- yeah.</b> 6 Q Are Quiet Skies rules ever deactivated 7 because they have been proven ineffective? 8 MS. KONKOLY: Objection insofar as that 9 calls for information protected by SSI. You can 10 answer to the extent that you can. 11 <b>A So I'm going to rephrase. I'm not going to</b> 12 <b>say they've been activated because they've been</b> 13 <b>proven ineffective. We do, by virtue of</b> 14 <b>continuously reviewing current intelligence</b> 15 <b>reporting related to the threat, can and will and</b> 16 <b>have deactivated rules if the threat is no longer</b> 17 <b>present or is over, so not just as part of a</b> 18 <b>quarterly review.</b> 19 <b>We're continuously reviewing the threat when</b> 20 <b>we have identified whether -- if it's -- the threat</b> 21 <b>has evolved or is no longer present, we will</b> 22 <b>deactivate the rule. But that is not because of</b></p>

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<p style="text-align: right;">101</p> <p><b>1 ineffectiveness.</b></p> <p>2 Q I want you to turn to tab six of your</p> <p>3 binder, which will now get marked as Exhibit 4. And</p> <p>4 this is a story from NPR that was published on</p> <p>5 July 30, 2018.</p> <p>6 (Froemling Deposition Exhibit 4 was</p> <p>7 marked for identification and attached to the</p> <p>8 transcript.)</p> <p>9 Q On the second page of this in the fifth full</p> <p>10 paragraph, the NPR story reports, quote, After</p> <p>11 analyzing travel patterns, the TSA pulls</p> <p>12 intelligence from a number of sources, dash, state</p> <p>13 and local law enforcement, federal agencies, and</p> <p>14 international partners, and dash, before deciding to</p> <p>15 assign an air marshal. The program is designed to</p> <p>16 ignore people clearly traveling for business or to</p> <p>17 visit family and focus on potential threats, Bilello</p> <p>18 said. Who is the TSA official Bilello?</p> <p>19 MS. KONKOLY: Objection, scope. You can</p> <p>20 answer if you know.</p> <p><b>21 A Michael Bilello is our assistant</b></p> <p><b>22 administrator for strategic communications and</b></p>	<p style="text-align: right;">103</p> <p>1 MS. KONKOLY: I'm going to again object on</p> <p>2 the basis of SSI. You can answer that one to the</p> <p>3 extent you can.</p> <p><b>4 A Yes. As stated in my declaration, TSA</b></p> <p><b>5 doesn't have a process to maintain a list of those</b></p> <p><b>6 passengers that have been identified as not being a</b></p> <p><b>7 high risk or presenting a low risk.</b></p> <p>8 MS. HOMER: Okay. Can we go off the record</p> <p>9 for a split second?</p> <p>10 THE VIDEOGRAPHER: Please stand by. We are</p> <p>11 going off the record.</p> <p>12 (Off the record.)</p> <p>13 THE VIDEOGRAPHER: We are back on the</p> <p>14 record. The time is 1:20 p.m.</p> <p>15 BY MS. HOMER:</p> <p>16 Q Are Federal Air Marshals ever assigned a</p> <p>17 special mission coverage for individuals listed on</p> <p>18 the TSDB?</p> <p>19 MS. KONKOLY: Objection as to scope.</p> <p>20 Objection insofar as the question calls for</p> <p>21 information protected by SSI. You can answer that</p> <p>22 to the extent that you can.</p>
<p style="text-align: right;">102</p> <p><b>1 public affairs.</b></p> <p>2 Q Okay. Does this paragraph I just read</p> <p>3 accurately reflect TSA policy?</p> <p>4 MS. KONKOLY: Objection insofar as the</p> <p>5 question calls for any information protected by SSI,</p> <p>6 but you can answer.</p> <p><b>7 A Yes. As I stated, it basically is</b></p> <p><b>8 paraphrasing what I've stated previously in that TSA</b></p> <p><b>9 reviews current intelligence to identify individuals</b></p> <p><b>10 that present a higher risk and beginning in March</b></p> <p><b>11 of 2018 have also been incorporated into the</b></p> <p><b>12 assignment of Federal Air Marshals as part of their</b></p> <p><b>13 risk-based security activities.</b></p> <p>14 Q How does the TSA determine who people are</p> <p>15 that are, quote, clearly traveling for business or</p> <p>16 to visit family, closed quote?</p> <p>17 MS. KONKOLY: I'm going to object on the</p> <p>18 basis of SSI and instruct the witness not to answer</p> <p>19 that question.</p> <p>20 Q Does the TSA have a process for separating</p> <p>21 out potential threats from individuals clearly</p> <p>22 traveling for business or to visit family?</p>	<p style="text-align: right;">104</p> <p><b>1 A I'm sorry. Can we take a break real quick</b></p> <p><b>2 just so -- sorry.</b></p> <p>3 MS. KONKOLY: Well, if we'll break, we'll</p> <p>4 come back and provide an answer.</p> <p>5 THE WITNESS: Yes. Sorry. Yeah.</p> <p>6 THE VIDEOGRAPHER: Please stand by. We are</p> <p>7 going off the record. The time is 1:21 p.m.</p> <p>8 (Off the record.)</p> <p>9 THE VIDEOGRAPHER: We are back on the</p> <p>10 record. The time is 1:27 p.m.</p> <p>11 (The Reporter read the record as</p> <p>12 follows: Are Federal Air Marshals ever assigned a</p> <p>13 special mission coverage for individuals listed on</p> <p>14 the TSDB?)</p> <p>15 MS. KONKOLY: And I'm going to again object</p> <p>16 as to scope and as to any SSI implicated in the</p> <p>17 answer, but you can answer to the extent you can.</p> <p>18 THE WITNESS: They may be.</p> <p>19 MS. HOMER: Thank you.</p> <p>20 MS. KONKOLY: And then lastly,</p> <p>21 Ms. Froemling, did you want to offer clarification</p> <p>22 regarding your earlier testimony about the selection</p>

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<p style="text-align: right;">105</p> <p>1 of Quiet Skies or rules-based matches for FAMS  2 special mission coverage?  3 THE WITNESS: Yes. I believe the prior  4 question was are the FAMS automatically assigned to  5 all flights with Quiet Skies rules-based passengers.  6 What I want to clarify is as FAMS, Federal Air  7 Marshals are available they will be assigned for  8 flights with Quiet Skies rules passengers.  9 MS. HOMER: Thank you. Did counsel have any  10 other questions?  11 MS. KONKOLY: That's it.  12 THE VIDEOGRAPHER: All right. Please stand  13 by. This marks the end of the videotaped deposition  14 of Hao-y Tran Froemling. We are off the record at  15 1:28 p.m.  16 THE COURT REPORTER: Can I get your  17 transcript order for the record?  18 MS. MENSI: Yes. Can you process it normal  19 processing and then make it out to the CAIR Legal  20 Fund.  21 MS. KONKOLY: Regular delivery. Email it to  22 me.</p>	<p style="text-align: right;">107</p> <p>1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC  2 I, KATY M. ZAMORA, Registered Merit  3 Reporter, Certified Realtime Reporter, and Notary  4 Public, the officer before whom the foregoing  5 deposition was taken, do hereby certify that the  6 foregoing transcript is a true and correct record of  7 the testimony given; that said testimony was taken  8 by me stenographically and thereafter reduced to  9 typewriting under my supervision; that reading and  10 signing was not requested; and that I am neither  11 counsel for or related to, nor employed by any of  12 the parties to this case and have no interest,  13 financial or otherwise, in its outcome.  14 IN WITNESS WHEREOF, I have hereunto set my  15 hand and affixed my notarial seal this 16th day of  16 October 2018.  17 My commission expires April 30, 2019.  18  19  20   21 NOTARY PUBLIC IN AND FOR  22 THE DISTRICT OF COLUMBIA</p>
<p style="text-align: right;">106</p> <p>1 (Off the record.)  2  3  4  5  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22</p>	